

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**YVONNE FORTNER**  
Claimant

**APPEAL NO. 12A-UI-03950-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CITY OF CLINTON**  
Employer

**OC: 02/26/12**  
**Claimant: Appellant (1)**

871 IAC 24.1(113)a – Approved Leave of Absence

**STATEMENT OF THE CASE:**

Yvonne Fortner filed a timely appeal from a representative's decision dated April 9, 2012, reference 04, which concluded the claimant was not able and available for work because the claimant was on an approved leave of absence and which denied benefits effective February 26, 2012. After due notice was issued, a telephone hearing was held on May 15, 2012. The claimant participated personally. Participating on behalf of the claimant was Ms. Adrienne Williamson, attorney at law. The employer participated by Mr. Jeff Farwell, city attorney, and witnesses Mr. Dennis Hart, transportation superintendent, and Mr. John Griffin, operations coordinator.

**ISSUE:**

At issue is whether the claimant was able and available for work while on a negotiated leave of absence.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Yvonne Fortner began employment with the City of Clinton on August 15, 2010. The claimant was hired to work as a part-time bus driver and was not guaranteed any minimum hours of work each week. The claimant was told at the time of hire that her hours would range between 0 hours to 34 hours per week. At times, however, the claimant worked in excess of 40 hours per week based upon the City of Clinton's needs and Ms. Fortner's willingness to work. Ms. Fortner is paid by the hour. Her immediate supervisor is John Griffin, operations coordinator. The claimant remains employed at the time of hearing and is on an approved medical leave of absence.

On February 24, 2012, Ms. Fortner inquired about obtaining a leave of absence from the City of Clinton. On February 27, 2012, the parties negotiated a leave of absence, agreeing that Ms. Fortner would be on a leave of absence from that time until approximately May 14, 2012, when the claimant expected to be released by her physician to return to work.

Ms. Fortner underwent carpal tunnel surgery on March 8, 2012, and was released for light-duty work by her physician approximately one week later on March 15, 2012. Ms. Fortner informed her employer that she was available for light-duty work. However, no light-duty work was available to her, as the reason for the claimant being off work was not due to a work-related illness or injury. Ms. Fortner is eligible to return to her position as a part-time bus driver for the City of Clinton upon being fully released by her physician to return to her normal occupation as a part-time bus driver. It appears that the employer has also added an additional requirement that Ms. Fortner be able to pass an assessment examination verifying she is able to perform the duties incident to her job position. Ms. Fortner continued to be on an approved leave of absence at the time of hearing and has not relinquished her employment with the City of Clinton. The City of Clinton is holding the claimant's normal job position for her, pending the claimant's full release to return to work and functional assessment review.

It is the claimant's contention that there are light-duty jobs available and that she should not be precluded from returning to work without a full release. It is the claimant's further contention that, she may be eligible to receive unemployment insurance benefits because of seasonal reductions in bus routes.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work.

Iowa Code section 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2)j(1)(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that

sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual and the individual is considered ineligible for benefits for the period. See 871 IAC 24.22(2)i(1).

The evidence in the record establishes that Ms. Fortner was the moving party in requesting a leave of absence and that the leave of absence was negotiated between Ms. Fortner and the City of Clinton. Both parties agreed that the claimant's job position or a similar job position would be held open for her from the time that the leave of absence commenced approximately February 27, 2012, until May 14, 2012, when the claimant expected to be released to resume her normal job duties with the City of Clinton.

Because the claimant requested, negotiated, and consented to be on a leave of absence, the claimant is deemed to be voluntarily unemployed for the period of time agreed upon by the parties until such time, in the case of a medical leave of absence, that the employee is deemed recovered and able to resume his or her normal job duties. Under the provisions of the law, the individual is considered to be ineligible for benefits for that period.

Ms. Fortner has also raised other issues in her appeal that are not germane to the availability issue at hand. The claimant has not been released to return to full work duties and the employer is not obligated to accommodate a non-work-related medical condition.

871 IAC 24.23(26) provides that where an individual is employed in a part-time job at the same hours and wages as contemplated in the original contract of hire and is not working on a reduced workweek basis different from the contract of hire, the claimant cannot be considered to be partially unemployed. The evidence in the record establishes the claimant was not guaranteed any minimum number of hours per week as a part-time employee, and therefore there is an issue with the claimant claiming partial unemployment benefits.

The claimant's position regarding the requirement that she pass a physical assessment examination before being allowed to return to work is not germane in this matter, as the claimant has not yet been fully released to return to work and continues to be on a leave of absence. The claimant has not quit her job because of what she considered to be a change in the original agreement of hire and has not been separated by the employer at the time of hearing.

For the reasons stated herein, the administrative law judge concludes the claimant has not met the able and available requirements of the law, as the evidence establishes that the claimant continues to be on a negotiated leave of absence and the employer continues to hold the claimant's job position open for her. Unemployment insurance benefits are withheld.

**DECISION:**

The representative's decision dated April 9, 2012, reference 04, is affirmed. The claimant is on an approved leave of absence and is therefore disqualified for benefits effective February 26, 2012, until such time as the claimant has met the able and available requirements of the Iowa Employment Security Act and is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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