

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER M BUFORD
Claimant

APPEAL NO. 10A-UI-05235-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

**Original Claim: 02/14/10
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Jennifer M. Buford (claimant) appealed a representative's March 26, 2010 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits in connection with Dillard's, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2010. This appeal was consolidated for hearing with one related appeal, 10A-UI-05234-DT, in which the same employer is identified as The Higbee Company. The claimant participated in the hearing. Lori Flahive appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

Was there period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer on November 20, 2006. She normally works part-time (30 – 35 hours per week) as a beauty advisor in the employer's Des Moines, Iowa, area store. Her most recent day of work was February 12, 2010. The claimant began a leave of absence on February 18, 2010. The primary reason for the leave of absence was chronic lower back pain, for which she was to undergo intensive physical therapy through March 8. No medical evidence was presented regarding what the cause or aggravating factors were regarding the claimant's February symptoms; however, the claimant was also pregnant at the time. She gave birth on May 18. She has not yet been released for work by either her obstetrician or the doctor who was treating her for back pain. Her leave of absence is currently extended through June 23, 2010.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, she must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from her employment due to being on a leave of absence is not “able and available” for work during the period of the leave, as it is treated as a period of voluntary unemployment. 871 IAC 24.22(2)j; 871 IAC 24.23(10)

The claimant's current unemployment is due to her being on a leave of absence due to a medical issue that has not been shown by competent medical evidence to be work-related in either cause or aggravation. As the condition causing her temporary unemployment was not shown to be related to the work environment, in order to be sufficiently well for the claimant to regain her eligibility status as being able and available for work, she must have a complete recovery to full work duties without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). For the period the claimant is seeking unemployment insurance benefits, she was and is under sufficient work restrictions as would preclude her from returning to her regular work duties. She is therefore not eligible to receive unemployment insurance benefits for this period.

DECISION:

The representative's March 26, 2010 decision (reference 02) is affirmed. The claimant was not able and available for work effective February 18, 2010, and the period of temporary separation is a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits for the period from February 14, 2010 until at least such time as she is released to return to her regular work duties.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw