

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBBIE L ABELL

Claimant

APPEAL NO. 07A-UI-06707-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARLEY'S & SATHERS CANDY CO INC

Employer

**OC: 06/03/07 R: 03
Claimant: Appellant (4)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Debbie Abell filed an appeal from a representative's decision dated June 26, 2007, reference 01, which denied benefits effective June 3, 2007 on a finding that she was not able to work. After due notice was issued, a hearing was held by telephone on August 1, 2007. Ms. Abell participated personally. Exhibit One was admitted on the employer's behalf in lieu of participation.

ISSUE:

At issue in this matter is whether Ms. Abell satisfied the availability requirements of the law when she filed her claim for job insurance benefits effective June 3, 2007.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Abell has been employed by Farley's & Sathers Candy Company, Inc. since October 18, 1989. She works full time as a machine operator. During the week of June 3, 2007, the employer requested volunteers to go home due to lack of work. Ms. Abell did not work on June 4, June 5, or June 7 as she volunteered to be laid off. She did work on June 3 and June 8. If the employer does not obtain enough volunteers, individuals may be forced to take time off.

Ms. Abell began a medical leave of absence on June 11 to undergo surgery on June 12, 2007. It was anticipated she would be gone from three to six weeks. As of the date of the hearing, she had not been released to return to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether Ms. Abell satisfied the availability requirements of Iowa Codes section 96.4(3) when she filed her claim for job insurance benefits. She filed a claim effective June 3, 2007 because she worked a reduced workweek. She only worked two of the five days she would normally work. She did not work the remaining three days because the employer requested volunteers to take time off and Ms. Abell volunteered.

The administrative law judge must determine if, but for her volunteering to take time off, Ms. Abell could have worked her normal schedule the week of June 3. The administrative law judge has no definitive information as to how many people the employer needed to send home or lay off the week of June 3 and how many volunteered to be laid off. The administrative law judge cannot conclude that Ms. Abell would not have been forced into a layoff situation due to lack of sufficient volunteers. In short, the evidence failed to establish that, but for her decision to accept a voluntary layoff, Ms. Abell could have worked all five days the week of June 3. For the above reasons, benefits are allowed for the week ending June 9, 2007.

As of the week beginning June 10, 2007, Ms. Abell was no longer available for work because she underwent surgery on June 12. She remains unable to work because she has not been released by her doctor. Therefore, benefits are denied from June 10 and until such time as she is released to return to work.

DECISION:

The representative's decision dated June 26, 2007, reference 01, is hereby modified. Ms. Abell is allowed benefits for the one week ending June 9, 2007 as she was on layoff but remained available to work her normal schedule. Benefits are denied effective June 10, 2007 and until such time as Ms. Abell presents proof to Workforce Development that she has been released to return to work, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css