

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHEYANNE M BROWN
Claimant

APPEAL NO. 11A-EUCU-00620-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

OC: 12/12/10

Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Cheyanne M. Brown (claimant) appealed a representative's July 19, 2011 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits during a period of her employment with Wal-Mart Stores, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 23, 2011. This appeal was consolidated for hearing with one related appeal, 11A-EUCU-00618-DT¹. The claimant participated in the hearing. Sue Nuss 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 June 14, 2005. She worked full-time as a sales associate in the tire and lube department at the employer's West Burlington, Iowa store. Her last day of actually working was February 16, 2011.

The claimant had surgery on her back on November 26, 2010. She went on medical leave covered under FMLA (Family Medical Leave) at that time. Her doctor gave her a partial release with restrictions against bending or stooping on or about December 14, 2010. At that time, the doctor suggested to the claimant that her back problems might be due to the heavy lifting she did at work. When she told the employer's human resources representative, the representative told her it was too late to claim that the injury was work-related. She also told the claimant she could not return to work until she could return 100 percent. As a result, she remained on the leave of absence until January 26, 2011.

¹ The decision in this case will deal with the claimant's status prior to February 21, 2011. The decision in 11A- EUCU-00618-DT will deal with the claimant's status as of February 21, 2011.

The claimant again saw her doctor on or about January 26, 2011. He indicated she should remain on work restrictions through February 14, 2011, so the claimant's leave was extended until that time. The claimant returned to work on February 15 and February 16, 2011. However, she again began having significant back pain, and she returned to her doctor on February 17. The doctor then gave her a note completely excusing her from work through February 28, and then indicated she could return with a 20-pound lifting restriction to last for four weeks.

The claimant brought the note to the human resources representative on February 21, 2011. The representative told the claimant that since she could not then return to work without any restrictions, the claimant was "required" to "quit."

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); 871 IAC 24.23(10)

The claimant's unemployment from December 12, 2010 through February 14, 2011 was due to her being on a leave of absence due to a medical issue, which might have been due to a work-related condition. Sufficient evidence was not provided by the claimant for the administrative law judge to conclusively determine that the condition was in fact work-related. 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). Neither are they intended to substitute for workers' compensation benefits. Iowa Code § 96.23. For the period the claimant is seeking unemployment insurance benefits between December 12 and February 14, her job was still being protected by the employer awaiting her recovery from work restrictions that were precluding her from returning to her regular work duties; the leave period was providing some benefit to the claimant. She is therefore not eligible to receive unemployment insurance benefits during that leave period.

DECISION:

The representative's July 19, 2011 decision (reference 03) is affirmed. The claimant was not able and available for work effective December 12, 2010 through February 14, 2011, and the period of temporary separation was a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits for that period

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw