

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JACQUELINE FLOYD**  
Claimant

**WINNEBAGO INDUSTRIES**  
Employer

**APPEAL 17A-UI-10386-NM-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 09/17/17**  
**Claimant: Appellant (1R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 9, 2017, (reference 01) unemployment insurance decision that denied benefits because she is currently on an approved leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on October 30, 2017. The claimant participated and testified. Gregory Floyd was also present on behalf of the claimant, but did not testify. The employer participated through Susan Gardner. Employer's Exhibits 1 and 2 were received into evidence.

**ISSUES:**

Is the claimant able to work and available for work effective September 17, 2017?

Is the claimant on an approved leave of absence?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full time as a production laborer, but has been on a voluntary medical leave of absence since May 3, 2017. Claimant went on leave to have knee replacement surgery. Claimant's condition was not caused by her employment. On September 11, 2017, claimant's doctor released her to return to work, but with restrictions. The restrictions prohibited claimant from doing work that required kneeling or prolonged standing. The employer did not have any work available within those restrictions. Claimant's restrictions were still in place at the time of the hearing. The employer testified claimant is still considered an employee on leave, but documentation it submitted states she will be considered to have voluntarily terminated if additional medical documentation was not submitted within three working days of her receipt of the letter. (Exhibit 2). Claimant received the letter via certified mail on October 24, 2017 and has not provided additional medical documentation to the employer, though she testified no new documentation is available.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work 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".

Iowa Admin. Code r. 871-24.22(2)(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.

Iowa Admin. Code r. 871-24.23(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

The claimant requested and was given a leave of absence beginning May 3, 2017. Inasmuch as the medical condition is not work-related and the treating physician has not released the claimant to return to work without restriction, she has not established her ability to work. While she may be able to perform light work duties, or other work within her restrictions, the employer is not obligated to accommodate a non-work related medical condition, and since she has not been released to perform her full work duties, she was not considered able to or available for work. Accordingly, benefits are denied.

Information was provided during the hearing that indicates claimant may have recently been separated from employment. This issue must be remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

**DECISION:**

The representative's decision dated October 9, 2017, (reference 01) is affirmed. The claimant is not able to work and available for work effective September 17, 2017. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

**REMAND:**

The issue of whether claimant has been separated from employment is remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs