

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHARI A BIRDWELL
Claimant

APPEAL NO. 07A-UI-04793-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 04/08/07 R: 02
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Shari Birdwell (claimant) appealed a representative's May 7, 2007 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was too ill to work with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 29, 2007. The claimant participated personally. The employer participated by Diane Pierce, Store Manager, and Melinda Randell, Human Resources Assistant.

ISSUE:

The issue is whether the claimant was able to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from September 14, 2006, to May 23, 2007. During her employment the claimant she suffered from blood clots in her legs. She was hospitalized and placed on Family Medical Leave Act (FMLA) leave. The claimant was released to return to work with restrictions on April 9, 2007. When the employer did not hear from the claimant, the employer telephoned the claimant on May 11, 2007. The claimant said she would return on May 21, 2007. On May 21 and 22, 2007, the claimant's boyfriend notified the employer that she would not work because she did not feel well. On May 23, 2007, the claimant worked part of a day and went home ill. The claimant has not returned since. She is using the remainder of her FMLA.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able to work.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness she is considered to be unavailable for work. The claimant was in the hospital and then requested FMLA. She is considered to be unavailable for work after March 23, 2007. The claimant is disqualified from receiving unemployment insurance benefits beginning March 23, 2007, due to her unavailability for work.

DECISION:

The representative's May 7, 2007 decision (reference 02) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she is not available for work with the employer.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs