

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA S DIAZ

Claimant

APPEAL NO. 09A-UI-03934-E2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC

Employer

Original Claim: 01/21/09

Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work
871 IAC 24.23(10) – Request of Leave of Absence

STATEMENT OF THE CASE:

Maria Diaz, claimant, appealed a representative's decision dated March 4, 2009, reference 01, which denied benefits as of January 25, 2009, finding the claimant was on a leave of absence and not available for work. After due notice was issued, a telephone hearing was held April 3, 2009. The claimant participated personally with witness Leo Kanne, Union President, and with her attorney, Dennis McElwain. The employer participated by Becky Jacobsen. The hearing was interpreted into Spanish by Angela Arellano. Exhibit One, pages 1-8, and Exhibit B, pages 1-2, were admitted into evidence.

ISSUE:

At issue in this matter is whether the claimant is on a requested leave of absence and whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant last worked for this employer on July 18, 2008. At that time, she took a medical leave of absence. The claimant offered to return to work on November 6, 2008. The claimant submitted a return to work statement from Ric Jensen, M.D., Ph. D. (Exhibit 1, page 3). The claimant submitted a letter from Dr. Jensen that provided more detail about the treatment options for the claimant. (Ex. A, pp. 1-2) The employer had the claimant examined by a nurse (Ex. 1, p. 5) and sent for a physical capacity evaluation. The physical capacity examination rated the claimant capable of doing sedentary work. The testing showed the claimant was capable of occasional bending, stooping, squatting, crawling, climbing steps, kneeling, and bending/twisting. She could do continual walking. (Ex. 1, p. 7) The employer sent this information along with a form that listed seven specific physical activities. This information was reviewed by Dr. Crabb, who stated the claimant was not able to return to work. (Ex.1, p. 8) It does not appear that Dr. Crabb examined the claimant. These activities were not based upon the job of Box Maker that the claimant had bid and won through the union contract. The claimant has the physical ability to do the job of Box Maker as described by Mr. Kanne, which was described as meeting sedentary work limitations.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Diaz is on a medical leave of absence and not able and available for work. It does not.

The evidence establishes that Ms. Diaz requested and was granted a medical leave of absence by Farmland Foods on or about July 18, 2009. The employer considered her to be on medical leave as of the day of the hearing. The claimant's doctor, Dr Jensen, provided a release allowing the claimant to return to work. His report is more persuasive than Dr. Crabb's opinion. The claimant's doctor had a treatment relationship with the claimant and has examined the claimant.

871 IAC 24.22(2)j(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.

For the reasons stated herein, the administrative law judge concludes that Ms. Diaz is on an approved medical leave of absence. She offered to return to work in a job she had won through the bidding process as a Box Maker. The claimant offered to return to work on November 6, 2008. The employer has refused to end the medical leave of absence. She has been eligible for unemployment since that date, as she was released by a doctor November 6, 2008. She was able and available for work.

DECISION:

The representative's decision dated March 4, 2009, reference 01, is reversed. Benefits are allowed as of November 6, 2008.

James Elliott
Administrative Law Judge

Decision Dated and Mailed

jfe/kjw