

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**MICHELLE N BRIDGEWATER**  
Claimant

**APPEAL NO: 18A-UI-11439-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DOLGENCORP LLC**  
Employer

**OC: 10/14/18**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 19, 2018, reference 02 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 10, 2018. The claimant participated in the hearing. Jim Musser, District Manager, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work and whether she is on a leave of absence.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired as a part-time service agent for Dolgencorp, LLC on April 11, 2018, and is still employed in that capacity today. The claimant sustained a non-work related injury approximately the first week in September 2018. The store manager allowed the claimant to work for several weeks before instructing the claimant to bring a doctor's note with her lifting and other restrictions. On October 17, 2018, the claimant brought the note which stated she could not lift more than 10 pounds or put her arm above her head. On October 18, 2018, the manager called the claimant and stated Human Resources "didn't want to work with your restrictions anymore and you are off the schedule." The manager told the claimant she was being placed on "forced medical leave" which the claimant later learned does not exist and was told by the manager to apply for unemployment. The employer testified the claimant's leave of absence was denied. The claimant never applied for a medical leave of absence. The claimant did not want to take a leave of absence but preferred to continue working as she had been but the employer denied her request. She did not quit her employment.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work and is not on a leave of absence.

Iowa Code § 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:

(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 did not request a leave of absence and consequently, this was not a voluntary period of unemployment agreed to by both the claimant and the employer. After allowing the claimant to work with restrictions for approximately seven weeks, the employer effectively placed her on a leave of absence without the claimant's consent. Therefore, the claimant is considered able and available for work and did not seek a voluntary period of unemployment.

The term that most closely fits this situation is a layoff. The employer will not allow the claimant to return to work with restrictions, which is a lay off from the employer. The claimant is willing to return to work and perform the tasks she performed the seven weeks the employer allowed her to work following her injury. Under either scenario, the claimant is considered able and available for work, is not on a leave of absence, and was laid off when the employer would not allow her to return to work and perform services. Accordingly, benefits are allowed.

**DECISION:**

The November 19, 2018, reference 02, decision is reversed. The claimant is able and available for work and was laid off July 22, 2018. Benefits are allowed, until such time as the employer allows the claimant to return to work or separates from this employer. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn