

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSICA M NICKERSON**  
Claimant

**SLB OF IOWA LC**  
Employer

**APPEAL NO. 12A-UI-08661-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/10/12**  
**Claimant: Respondent (2R)**

Section 96.5-1 – Voluntary Quit  
Section 96.4-3 – Able and Available  
Section 96.3-7 – Overpayment of Benefits

**STATEMENT OF THE CASE:**

The employer filed an appeal from a decision of a representative dated July 17, 2012, reference 01, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on August 14, 2012. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Tom Reavis, the human resources generalist. The record consists of the testimony of Tom Reavis and Employer's Exhibits 1-3.

**ISSUE:**

Whether the claimant voluntarily left for good cause attributable to the employer;

Whether the claimant is able and available for work; and

Whether the claimant has been overpaid unemployment insurance benefits.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer is Panera Bread of Iowa, which is a casual dining restaurant. The claimant worked at the Cedar Falls, Iowa, location. The claimant was hired as a full-time baker on October 4, 2011. The claimant's last day of work was either June 11, 2012, or June 12, 2012. On June 14, 2012, the claimant requested a medical leave of absence, which was granted by the employer. The claimant has since been terminated by the employer on August 2, 2012, for absenteeism.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.22(2)j(1)(2)(3) provides:

Benefit 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.

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

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(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.

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The representative set this decision up as a voluntary quit on June 14, 2012, due to a work-related injury. There was no separation of employment on June 14, 2012. Rather the claimant went on a medical leave of absence under the Family Medical Leave Act (FMLA). The claimant informed the employer that she had a serious health condition that made her unable to perform the essential functions of her job. (Exhibit 1).

The administrative law judge concludes that the claimant was not able and available for employment effective June 14, 2012, and therefore is disqualified from receiving benefits. This matter is remanded to the Claims Section to determine whether the claimant's subsequent separation of employment on August 2, 2012, disqualifies her from receiving benefits and whether the claimant has been overpaid unemployment insurance benefits.

**DECISION:**

The decision of the representative dated July 17, 2012, reference 01, is reversed. The claimant is not eligible for benefits effective June 14, 2012, because she is not able and available for work. This matter is remanded to the Claims Section to determine whether the claimant's separation from employment on August 2, 2012, disqualifies her from receiving benefits and whether the claimant has been overpaid unemployment insurance benefits.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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