

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PORSHA R JONES

Claimant

APPEAL NO: 14A-UI-09427-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAPITAL PARK EARLY LEARNING

Employer

OC: 08/03/14

Claimant: Appellant (5)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Porsha R. Jones (claimant) appealed a representative's September 9, 2014 (reference 02) decision that concluded she was not eligible to receive unemployment insurance benefits in connection with her employment with Capital Park Early Learning (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 2, 2014. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that the employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

Was there a period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer on November 4, 2013. She worked full time as a teacher assistant. Her most recent day of work was July 7, 2014.

The claimant is pregnant with a due date on or about January 2, 2014. On July 7 she went for a doctor's appointment, at which time due to complications the doctor ordered her off work through her delivery and presumably through her period of post-delivery recovery. She informed her employer that she would be unable to return to work and the employer agreed that the claimant would be "laid off" until she was released as being able to return to work. As of the date of the hearing the claimant was still on bed rest, which was still anticipated as going through her delivery.

REASONING AND CONCLUSIONS OF LAW:

The claimant is not eligible to receive unemployment insurance benefits simply because the employer may have chosen to characterize her temporary separation from employment due to personal medical issues as a "layoff"; such characterizations by a party are not binding on the Agency or administrative law judge. Claimants are not automatically qualified in the absence of a protest by their employer. *Kehde v. Iowa Division of Job Service*, 318 N.W.2d 202 (Iowa 1982).

For each week for which a claimant seeks unemployment insurance benefits, she must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from her employment due to being on an extended absence from work due to a medical issue is not "able and available" for work during that period, as it is treated as a period of voluntary unemployment. Rules 871 IAC 24.22(2); 871 IAC 24.23(10).

The claimant's current unemployment is due to her being off work due to a non-work-related medical issue. As the condition causing her temporary unemployment was not related to the work environment, in order to be sufficiently well for the claimant to regain her eligibility status as being able and available for work, she must have a complete recovery to full work duties without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. *White v. Employment Appeal Board*, 487 N.W.2d 342 (Iowa 1992). To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Rule 871 IAC 24.22(1).

For the period the claimant is seeking unemployment insurance benefits, she was under sufficient work restrictions as would preclude her from returning to her regular work duties or from performing any work. She is therefore not eligible to receive unemployment insurance benefits for this period.

DECISION:

The representative's September 9, 2014 (reference 02) decision is modified with no effect on the parties. The claimant was not able and available for work effective July 7, 2014 and the period of temporary separation is a period of voluntary unemployment not attributable to the employer. The claimant is not qualified to receive unemployment insurance benefits for the period beginning July 7, 2014 through such point as she is released by her doctor as able to work, if she is then otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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