

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLA J WILSON
Claimant

APPEAL NO. 08A-UI-08586-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EMPLOYMENT SERVICES
Employer

**OC: 07/06/08 R: 03
Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Marla Wilson filed an appeal from a representative's decision dated September 18, 2008, reference 01, which denied benefits on a finding that she was not available for work because she was on a leave of absence. After due notice was issued, a hearing was held by telephone on October 9, 2008. Ms. Wilson participated personally. The employer did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether Ms. Wilson has satisfied the availability requirements of the law since filing her claim for job insurance benefits effective July 6, 2008.

FINDINGS OF FACT:

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Wilson began working for Heartland Employment Services on July 3, 2000. She worked full time in environmental services. Her last day at work was April 19, 2008. She was off work thereafter because she sustained a fall at home and cracked some vertebrae. While Ms. Wilson was receiving treatment for the cracked vertebrae, it was discovered that she has congestive heart failure.

Ms. Wilson had heart surgery in July of 2008. She had not been released back to work before the surgery. In August, she exhausted all available leave under the Family and Medical Leave Act and was, therefore, placed on a personal leave of absence. She has to return to work by October 25, 2008 or her job will no longer be available to her. Ms. Wilson had a second heart surgery on September 7. She has two primary treating physicians, neither of whom has released her to return to work. She has not been able to perform work of any sort since she filed her claim for job insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

In order to receive job insurance benefits, an individual must be physically able to engage in work activity. Iowa Code section 96.4(3). Ms. Wilson is not currently able to work and has not

been able to work at any point since filing for unemployment benefits effective July 6, 2008. According to her testimony, her doctors have restricted her from all work activity. As such, she is not able to work as required by law.

The representative's decision that is the subject of this appeal denied benefits on a finding that Ms. Wilson was on a requested leave of absence. An individual who is on a negotiated leave of absence is considered voluntarily unemployed and, therefore, not available for work. See 871 IAC 24.22(2)j. The administrative law judge appreciates that Ms. Wilson may not have requested her current personal leave of absence. However, the fact remains that she is not entitled to job insurance benefits because of her inability to work. Therefore, benefits must be denied.

DECISION:

The representative's decision dated September 18, 2008, reference 01, is hereby affirmed. Ms. Wilson failed to satisfy the availability requirements of the law effective July 6, 2008. Benefits are withheld until such time as she provides proof that she is physically able to engage in some gainful work activity that is engaged in by others as a means of livelihood, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw