

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LILLIAN B DUKULY
Claimant

APPEAL NO. 14A-UI-00543-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 12/08/13
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the representative's decision dated January 13, 2014, reference 01, which denied unemployment insurance benefits effective December 8, 2013 finding that the claimant was not able to work because of pregnancy. After due notice was provided, a telephone hearing was held on February 6, 2014. The claimant participated personally. The employer participated by Mr. Tom Kuiper, Hearing Representative and witness, Ms. Theresa TeKolste, Human Resource Manager.

ISSUE:

At issue in this matter is whether the claimant is able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

The administrative law judge, having considered all the evidence in the record, finds: Lillian Dukuly began employment with Mosaic on April 22, 2013. Ms. Dukuly was hired to work as a full-time direct support associate and is paid by the hour. On December 4, 2013, Ms. Dukuly began an approved medical leave of absence because she was pregnant. The parties agreed that Ms. Dukuly would return to work after the birth of her child and released by her physician. The employer agreed to save the claimant's job or a similar job for the claimant until her return. Ms. Dukuly returned to work after being released by her doctor on January 20, 2014.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work and is available for work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22.

To satisfy the ableness requirement, an individual must be physically and mentally able to work. With respect to illness, injury or pregnancy, each case is decided upon an individual basis recognizing that various jobs present different physical requirements. 871 IAC 24.22(1)(a). A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required, that is the statement is legally sufficient to establish the claimant's physical ability unless disputed by other evidence.

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.

In the case at hand the evidence in the record establishes that Ms. Dukuly began an approved leave of absence on December 4, 2013 and remained on the pregnancy leave of absence until being released by her physician to return to work on January 20, 2014. Under the provisions of the Iowa Employment Security Law a leave of absence negotiated with the consent of both parties is deemed a period of voluntary unemployment and by the law the individual is considered ineligible for benefits for the period of the leave of absence.

The administrative law judge concludes that Ms. Dukuly was not able and available for work during the period in question because she was not able to work due to pregnancy and because

she was not available for work because she had chosen to enter a leave of absence agreement with her employer. At the conclusion of the leave of absence, Ms. Dukuly was re-employed as agreed. Because the claimant was not able and available for work effective December 8, 2013 she is ineligible to receive unemployment insurance benefits until she is able to meet all the eligibility requirements of Iowa law.

DECISION:

The representative's decision dated January 13, 2014, reference 01, is affirmed. The claimant is not eligible to receive unemployment insurance benefits effective December 8, 2013 as the claimant was not able to work and had entered a leave of absence agreement with her employer.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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