

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY E BROMLEY**  
Claimant

**APPEAL NO: 13A-UI-00056-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LK TWINS INC**  
Employer

**OC: 11/25/12**  
**Claimant: Respondent (2)**

Section 96.4-3 – Able and Available  
871 IAC 24.22(2)j(1-3) – Leave of Absence

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated December 27, 2012, reference 01, that held the claimant was eligible for benefits as a part-time employee effective November 25, 2012, and the employer was denied a relief of charges. A telephone hearing was held on February 18, 2013. The claimant participated. Jennifer Bank, Owner, and Annette Bank, Owner/Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant was re-hired on June 1, 2011 and began work for the employer. During the later period of her employment she was a part-time lead shift worker averaging 25 to 30 hours weekly.

She was granted a maternity leave of absence beginning October 3, 2012 to end December 17. Prior to end of the approved leave period, she requested on November 14 to come back and work one shift a week. On December 6 she amended the request to work 15-20 hours weekly.

The employer had posted its work schedule through the end of November and it had no work to offer claimant until the week ending December 8. Claimant did work one shift and earned wages totaling \$70.00. Later, the department issued a decision dated February 1, 2013, reference 02, that disqualified claimant effective December 30 as not able and available for work.

## 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".

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.

The administrative law judge concludes claimant is not able and available for work for the employer effective November 25, 2012 because she was on an approved maternity leave through December 17 that is a voluntary period of unemployment.

Claimant requested and was granted maternity leave through December 17. The employer had posted a work schedule through the end of November so the earliest claimant could be put back to work was for the one day she requested the week ending December 8. The employer was not obligated to adjust the end of the approved maternity leave period to accommodate claimant, and it got her the one day of weekly work she asked for as soon as possible.

**DECISION:**

The department decision dated December 27, 2012, reference 01, is reversed. The claimant does not meet the availability requirements of the law effective November 25, 2012 due to a maternity leave of absence.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/css