IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SARAH M BROOKMAN
Claimant

COMPREHENSIVE SYSTEMS INC
Employer

APPEAL NO. 12A-UI-07316-JTT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 05/20/12
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available
871 IAC 24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

Sarah Brookman filed a timely appeal from the June 15, 2012, reference 02, decision that denied benefits based on an agency conclusion that she had voluntarily quit without good cause attributable to the employer on May 20, 2012. After due notice was issued, a hearing was held on July 12, 2012. Ms. Brookman participated. Sheryl Heyenga represented the employer and presented testimony through Sandra Schmitt. Exhibits One through Six and A were received into evidence. The parties waived formal notice on the issues of whether the claimant has been able to work and available for work since she established her claim for benefits.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant separated from the employment and did so for a reason that disqualifies her for unemployment insurance benefits.

Whether the claimant has been on an approved leave of absence that she requested.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sarah Brookman started working for Comprehensive Systems, Inc. in September 2011 and last performed work for the employer on and last performed work for the employer sometime between February 9 and April 20, 2012. Neither Ms. Brookman nor the employer is able to provide the last date worked. Ms. Brookman had started the employment as a part-time, overnight, direct support staff worker. In that position, Ms. Brookman worked 15 to 25 hours per week. In that position, Ms. Brookman's duties included doing bed checks, changing consumer's briefs, cleaning, and associated paperwork.

On January 30, 2012, Ms. Brookman switched to a part-time cooking position. Ms. Brookman had requested the change. The hours of the cooking position were 3:30 to 6:30 p.m., Monday through Friday. Ms. Brookman worked 15 hours per week in the cook position.

On February 9, 2012, Ms. Brookman requested to switch to a part-tie, *on-call* direct support staff position. Ms. Brookman was experiencing complications with her pregnancy and had decided she did not want to have to appear for regularly scheduled shifts or to have to continue to call in absences. Ms. Brookman also asked the employer about the employer's leave of absence policy before she elected to go on-call. In connection with her switch to on-call status, Ms. Brookman signed a document on February 13, 2012, in which she acknowledged the physical requirements of the direct support staff position. These included a requirement that Ms. Brookman be able to safely lift 60 pounds from floor level to waist level.

After Ms. Brookman switched to the on-call position, she continued to perform work for the employer on occasion.

On April 23, 2012, Ms. Brookman provided the employer with a doctor's note that said she had been seen by the OB/GYN doctor at Allen Hospital on that day for prenatal care. The doctor wrote that Ms. Brookman "is not allowed to do any weight lifting." Ms. Brookman requested and commenced an approved leave of absence that was deemed effective April 20, 2012. The employer did not compel Ms. Brookman to commence the leave of absence. Ms. Brookman told the employer that her doctor had put her on a lifting restriction for the remainder of her pregnancy and told the employer that her delivery due date was September 24, 2012. Ms. Brookman indicated at the appeal hearing that the anticipated delivery date is September 22, 2012.

Until the unemployment insurance appeal proceedings, Ms. Brookman had not provided the employer with any medical documentation indicating she was no longer subject to the restriction against all lifting. Ms. Brookman has provided a note drafted by a nurse on behalf of Dr. Anthony A. Onuigbo, M.D. The note is dated June 20, 2012. The note reads as follows: "Sara Brookman is pregnant and has been under out care since 4/24/12. She has never been unable to work. We just have her on a wt. restriction."

Ms. Brookman has provided no other medical documentation regarding her work ability or work availability. Ms. Brookman asserts she has been placed on a 50-pound lifting restriction, but has provided no medical documentation of the same.

Ms. Brookman has not returned to the employer to offer her services, though she and the employer both deem her to be on an approved leave of absence.

Ms. Brookman waited until May 20, 2012 to establish a claim for unemployment insurance benefits. Ms. Brookman commenced her search for new work at that time. Ms. Brookman has made two job contacts per week. The job contacts have included Panera Bread, Gordman's, Ramada, Tobacco Outlet, Lonestar Steakhouse, Casey's and at least one other restaurant server position. Ms. Brookman did not look for work during the week that ended July 14, 2012 because she was without the use of her car for most of that week. Most, if not all of the positions require lifting.

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:
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> 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(1)a and (2) provide:

> Benefits 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.
>
> (1) Able to work. An 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.
>
> a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.
>
> (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.

The weight of the evidence in the record establishes that Ms. Brookman has been on an approved leave of absence since April 20, 2012 and continues on the approved leave of absence at this time. A leave of absence is considered a period of voluntary unemployment during which a person does not meet the work availability requirements and is not eligible for unemployment insurance benefits. See 871 IAC 24.23(10).

The weight of the evidence fails to support Ms. Bookman's assertion that she has been able to work and available for work since she established her claim for unemployment insurance benefits. The administrative law judge notes that Ms. Brookman had transitioned from 12-25 hours per week to 15 hours per week, just three hours a day, and then transitioned to an on-call position on February 9, 2012. Ms. Brookman's actions indicate a step-by-step withdrawal from the labor market. The request to commence the leave of absence during the latter part of April was but the final step in Ms. Brookman's voluntary removal of herself from the labor market. Ms. Brookman has presented no medical evidence to support her assertion that she is no longer subject to a complete ban on lifting. The ban came from an Allen Hospital OB/GYN as recently as April 23, 2012. The June 20, 2012, nurse's note makes the general statement that Ms. Brookman has "never been unable to work," but adds that she has been on a weight restriction. The note does not set forth a 50-pound lifting restriction. In other words, the medical documentation that Ms. Brookman has made available up to this point still indicates a complete ban on lifting. The medical restriction along with the step-by-step withdrawal from the labor market shortly before the claim was filed indicates that Ms. Brookman has not been able

to work and available for work since she established her claim for benefits. Of further note, the positions for which Ms. Brookman has applied whilst on the approved leave of absence have almost all been positions that would require substantial lifting. Ms. Brookman has failed to present sufficient evidence to establish that she is able to perform the work associated with those positions. The administrative law judge was somewhat alarmed to hear that Ms. Brookman had applied at a Tobacco Outlet while she pregnant. That situation further suggests that Ms. Brookman has applied for positions she knows she is not able to perform, which suggests that her work search is not in earnest.

Benefit are denied effective May 20, 2012. The able and available disqualification continued as of the benefit week that ended July 14, 2012. The able and available disqualification will continue until Ms. Brookman provides sufficient medical documentation to establish what exactly her weight restriction or other restrictions are and what types of work, if any, she is actually able to perform.

DECISION:

The Agency representative's June 15, 2012, reference 02, is modified as follows. The claimant has not separated from the employment, but has instead been on an approved leave of absence since April 20, 2012. The claimant requested the leave of absence. The leave of absence is based on a pregnancy with an anticipated September 22, 2012 delivery date. The claimant has not met the work ability and work availability requirements since she established her claim for benefits and is not eligible for benefits effective May 20, 2012. The able and available disqualification continued as of the benefit week that ended July 14, 2012. The able and available disqualification will continue until Ms. Brookman provides Workforce Development with satisfactory medical documentation to establish what exactly her weight restriction or other restrictions are and what types of work, if any, she is actually able to perform.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

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