

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEISHA M DOEPPKE
Claimant

APPEAL NO. 17A-UI-00686-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KWIK TRIP INC
Employer

OC: 12/04/16
Claimant: Appellant (1/R)

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

STATEMENT OF THE CASE:

Leisha Doeppke filed a timely appeal from the January 11, 2017, reference 02, decision that denied benefits effective December 4, 2016, based on the claims deputy's conclusion that Ms. Doeppke was unable to work due to pregnancy. After due notice was issued, a hearing was held on February 8, 2017. Ms. Doeppke participated. Rachel Housker represented the employer. Department Exhibit D-1 through D-9 were received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO, KCCO and WAGE-B.

ISSUES:

Whether Ms. Doeppke has been able to work and available for work within the meaning of the law since she established the claim for benefits that was effective December 4, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Leisha Doeppke began her part-time employment with Kwik Trip, d/b/a Kwik Star in Monona in July 2015 and last performed work for the employer on or about December 6, 2016. Ms. Doeppke was a clerk/cashier. Rachel Housker is Store Manager for the Monona Kwik Star store. On December 6, 2016, Ms. Housker met with Ms. Doeppke for the purpose of discussing Ms. Doeppke's attendance issues and for the purpose of issuing a written reprimand for attendance. Leading up to that meeting. Ms. Doeppke had been frequently missing work due to pregnancy-related illness, pregnancy-related medical appointments, and other reasons. For two months leading up the December 6 meeting, Ms. Doeppke had been working under a 20-pound lifting restriction and an eight-hour shift limit that the employer had accommodated. At the time of the meeting, the employer acknowledged that Ms. Doeppke had legitimate reasons for many of her absences, but stated that the absences had become excessive. The employer warned Ms. Doeppke that if the pattern of absences continued, Ms. Doeppke's employment could be in jeopardy. The employer asked Ms. Doeppke whether she would like to commence a leave of absence. The employer did not compel Ms. Doeppke to request or take a leave of absence. Ms. Doeppke elected to apply for a leave of absence for the remainder of her pregnancy.

Ms. Doeppke obtained a medical note from her doctor, dated December 6, 2016, which note stated as follows:

This is to certify that this patient is under my professional care. Leisha M Doeppke should remain off of work due to pregnancy complications for the remainder of pregnancy, starting on December 6, 2016.

Ms. Doeppke delivered the medical note to Ms. Housker on December 6, 2016 and commenced an approved leave of absence at that time. On December 7, 2016, Ms. Doeppke's doctor returned a Certification of Health Care Provider (Family and Medical Leave Act of 1993) form to the employer. The form was incomplete. However, the form indicated that Ms. Doeppke was pregnant, that her expected delivery date was January 24, 2017, and that she would need to be off work until six weeks following the birth of her baby. Ms. Doeppke signed an application for Family & Medical Leave on December 14, 2016.

On December 22, 2016, Ms. Doeppke told Ms. Housker that she was unsure whether she would be returning to the employment and that she might elect to go to college instead.

On December 27, 2016, the employer mailed Ms. Doeppke a letter granting Ms. Doeppke a leave of absence for the period of December 6, 2016 through a January 15, 2017 expected delivery date, though that date differed from the January 24, 2017 expected delivery date provided by the doctor in the Certification of Health Care Provider. The employer's letter left the door open for extension of the leave of absence upon written request. Ms. Doeppke's daughter was born on January 17, 2017. The employer extended the approved leave of absence. On January 26, 2017, Ms. Doeppke notified the employer that she had found another job. However, at the time of the February 8, 2017 unemployment insurance appeal hearing, Ms. Doeppke was still on the approved leave of absence that she had requested and the employer had approved.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(1)a provides:

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.

Iowa Admin. Code r. 871-24.22(2) provides:

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.

(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.

Iowa Admin. Code r. 871-24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The weight of the evidence establishes that Ms. Doeppke has been on a leave of absence since she established the unemployment insurance claim that was effective December 4, 2016. The employer did not compel Ms. Doeppke to begin a leave of absence. Ms. Doeppke's employment was not in jeopardy at the time she requested the leave of absence. On December 6, 2016, the employer merely warned Ms. Doeppke that her employment might be in jeopardy at some future date if Ms. Doeppke's attendance issues continued. On December 6, 2016, Ms. Doeppke's doctor provided written notice that Ms. Doeppke was *unable* to work due to pregnancy related complications. Ms. Doeppke has provided no updated medical

documentation to indicate that she has been released by her doctor to return to work and is in fact able to perform work.

At the time of the February 8, 2016 unemployment insurance appeal hearing, Ms. Doepcke was still on the leave of absence that she requested and the employer approved. Pursuant to the Certification provided by Ms. Doepcke's doctor, a reasonable person would conclude that the leave of absence might end on or about February 21, 2017, 12 weeks from the beginning of the approved FMLA leave period. The administrative law judge notes that six weeks from the birth of Ms. Doepcke's daughter will be February 28, 2017. That date would correspond to the six-week post-delivery return time referenced by Ms. Doepcke's doctor in the certification form.

Because Ms. Doepcke has been on approved leave of absence since she established her claim for benefits, she is considered voluntarily unemployed and not available for work within the meaning of the law. Because Ms. Doepcke's doctor took her off work and has not yet released her to return to work, Ms. Doepcke cannot be deemed able to work. Benefits are denied effective December 4, 2016. The able and available disqualification continued as of February 8, 2017. In other words, benefits are denied at least through the benefit week that ended February 11, 2017.

This matter is remanded for determination of whether Ms. Doepcke has been able to work and available for work during the period beginning February 12, 2017. The remand should also adjudicate the separation from the employment, if there has been a separation. Such adjudication should factor the present decision that found Ms. Doepcke to be on an approved leave of absence at least through the benefit week that ended February 11, 2017.

DECISION:

The January 11, 2017, reference 02, decision is modified as follows. The claimant has been on a voluntary approved leave of absence since she established the original claim for benefits that was effective December 4, 2016. The claimant has not demonstrated that she is able and available for work. Benefits are denied effective December 4, 2016. The availability disqualification continued as least through the benefit week that ended February 11, 2017.

This matter is remanded for determination of whether the claimant has been able to work and available for work during the period beginning February 12, 2017. The remand should also adjudicate the separation from the employment, if there has been a separation since the February 8, 2017 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs