

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARION J RIDLEY
Claimant

APPEAL NO. 09A-UI-14531-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

**Original Claim: 08/16//09
Claimant: Appellant (4/R)**

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Marion J. Ridley (claimant) appealed a representative's September 23, 2009 decision (reference 01) that concluded she was not qualified to receive benefits, and the account of Casey's Marketing Company (employer) was not subject to charge because she had voluntarily quit her employment for reasons that do not qualify her to receive benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 26, 2009. The claimant responded to the hearing notice but was not available for hearing. Vicki Lemke, the manager, appeared on the employer's behalf.

The claimant contacted the Appeals Section after the employer had been excused and the hearing had been closed. After learning the employer still considered her an employee who was on a leave of absence until December 10, 2009, the claimant did not ask for the hearing to be reopened. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work while she is on a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer in January 2009 making donuts and pizzas. As of August 11, 2009, the claimant is an employee who is on a medical leave of absence. Initially, this leave ended on October 10, 2009. However, the leave was extended for 60 days, or until about December 10, 2009. If the claimant is released to work before December 10, 2009, she should provide the release to the employer and she will be scheduled to work. If the claimant is not released to work by December 10, 2009, the employer will then make a decision as to whether to continue or discontinue her employment.

The claimant established a claim for benefits during the week of August 16, 2009. She has filed for and received benefits since August 16, 2009.

REASONING AND CONCLUSIONS OF LAW:

Until at least December 10, 2009, the employer considers the claimant an employee who is on a medical leave of absence. Therefore, the issue that relates to the reason for the claimant's employment separation is moot. However, the claimant started a medical leave of absence on August 10, 2009. Initially, this leave ended on October 10, 2009, but it has been extended for 60 days, or until December 10, 2009.

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. A claimant who has been granted a leave of absence is not deemed eligible to receive benefits. 871 IAC 24.23(10). Therefore, as of August 10, 2009, the claimant is not eligible to receive benefits, because she is not available to work while she is on a medical leave of absence. The claimant remains ineligible until her physician releases her to work and she provides a copy of the release to her local Workforce office and to the employer.

Since the claimant received benefits since August 16, 2009, an issue of overpayment is remanded to the Claims Section to determine.

DECISION:

The representative's September 23, 2009 decision (reference 01) is modified in the claimant's favor. The claimant has not quit and the employer has not discharged her. The employer still considers the claimant an employee, but she is on a medical leave of absence. The claimant's leave of absence began on August 10, 2009. If the claimant is released to return to work on or before December 10, 2009, she needs to contact her employer so she can be scheduled to work. The claimant is not eligible to receive benefits while she is on a medical leave of absence. The claimant will remain ineligible until she provides a statement from her physician that she is released to return to work with or without any restrictions. An issue of overpayment for the benefits the claimant has received since August 16, 2009, is remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw