

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURA YOUNG**  
Claimant

**APPEAL NO: 13A-UI-11662-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BANCROFT CAR GO LLC**  
Employer

**OC: 09/15/13**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 10, 2013, reference 01 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 8, 2013. The claimant participated in the hearing. Marsha Hellman, Manager, participated in the hearing on behalf of the employer. Claimant's Exhibit A was admitted into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been on a medical leave of absence since June 8, 2013. She is suffering from mental health issues and her doctor has not released her to return to work for the employer, or anyone else, to date. The employer is holding her job and the claimant will be allowed to return to work as soon as she is able. The claimant anticipates she will be released by her doctor with one to two months.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work and did take a leave of absence.

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) 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.

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.

871 IAC 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.

The claimant has been off work since June 8, 2013, and was effectively given a leave of absence until she can recover and return to work. She had not been released to return to work as of the date of the hearing and believes she will be released within the next one to two months after her medication is under control. Because the claimant has not received a release to return to work from her medical providers, she is not considered able and available for work within the meaning of the law. Therefore, benefits must be denied.

**DECISION:**

The October 10, 2013, reference 01, decision is affirmed. The claimant is not able to work and available for work effective June 8, 2013. Benefits are withheld until such time as the claimant makes herself available for work to the extent she was available during the base period history.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/pjs