

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSANNE J PIERCE
Claimant

APPEAL NO. 08A-UI-03527-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COE COLLEGE
Employer

OC: 03/09/08 R: 03
Claimant: Appellant (1)

Section 96-4-3 – Able and Available for Work
871 IAC 24.22(2)j(1) and (2) – Leave of Absence

STATEMENT OF THE CASE:

Susanne Pierce filed an appeal from a representative's decision dated April 4, 2008, reference 01, which denied benefits effective March 9, 2008, finding the claimant was voluntarily unemployed due a leave of absence and not available for work. After due notice was issued, a telephone conference hearing was scheduled for and held on April 24, 2008. Ms. Pierce participated personally. The employer participated by Lisa Ciha, physical plant director.

ISSUE:

The issue in this matter is whether the claimant was on an approved leave of absence and whether the claimant was able and available for work within the meaning of the Iowa Employment Security Act.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant is employed as a full-time custodian by Coe College. On March 3, 2008, at the claimant's request, an approved leave of absence was granted due to a non-work-related injury. The claimant continued on an approved leave of absence until being fully released to return to work by her physician on March 18, 2008. On March 11, 2008, the claimant attempted to return with a limited duty release requiring that the claimant be assigned to a complete sit-down job. As the employer did not have a job of that nature available, the claimant was not allowed to return to work until the following week, when she was fully released to return by her physician.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant was able and available for work while on an approved leave of absence. She was not.

The evidence in the record establishes that Ms. Pierce requested and was granted an approved leave of absence beginning March 3, 2008, and continuing until March 18, 2008, due to a non-work-related injury. During this time, the claimant was voluntarily unemployed and not available for work. Although the claimant attempted to secure light-duty work on March 11, 2008, no work of that nature was available to the claimant at that time by this employer.

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.

For the reasons stated herein, the administrative law judge concludes that the claimant was not able and available for work within the meaning of the Iowa Employment Security Act, and therefore benefits are denied effective March 9, 2008.

DECISION:

The representative's decision dated April 4, 2008, reference 01, is hereby affirmed. The claimant was not able and available for work while on an approved leave of absence. Benefits are denied as of March 9, 2008.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw