

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

WENDY GRIGGS

Claimant

APPEAL 16A-UI-10811-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP INC

Employer

OC: 09/11/16

Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

Iowa Admin. Code r. 871-24.23(10) – Able & Available – Leave of Absence

STATEMENT OF THE CASE:

Wendy Griggs (claimant) filed an appeal from the October 4, 2016, (reference 02) unemployment insurance decision that denied benefits based upon the determination she requested and was granted a leave of absence from her job at Dolgencorp, Inc. (employer). The parties were properly notified about the hearing. A telephone hearing was held on October 19, 2016. The claimant participated personally. The employer participated through Pat McNorton. Claimant's Exhibit A was received.

ISSUES:

Is the claimant able to and available for work?

Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Cashier beginning in May 2016, and her last day of work was September 3, 2016.

On Monday, September 5, 2016, the claimant injured her shoulder and tore her muscle. She was unable to lift with her right arm. She reported her injury to Assistant Manager Carol Moore the following day. Moore provided the claimant with the phone number for the employer's third party contractor who handles employee leave and accommodation requests. The claimant contacted the company and requested leave. The claimant was told she was not qualified for job protected leave under the Family Medical Leave Act (FMLA) as she had not worked for the employer long enough to qualify.

On October 11, 2016, the claimant provided the employer's contractor with a note from her doctor outlining her restrictions. The claimant's doctor stated she was unable to lift any items with her right arm or lift her arm above shoulder level. The doctor opined she could answer

phones or do desk work with her left arm. The following day, the claimant received a phone call from someone in the employer's Human Resources Department who told her the employer did not have a job for her and she was being separated from her employment at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work. Benefits are denied.

For an individual to be eligible for unemployment benefits, he or she must be able to work, available for work, and actively and earnestly seeking work each week that he or she files for benefits. Iowa Code § 96.4(3). The individual must be physically and mentally able to work in some gainful employment and each case is decided on an individual basis. Iowa Admin. Code r. 871-24.22(1)(a). An employee is considered not available for work if unemployed due to a leave of absence. Iowa Admin. Code r. 871-24.22(2)(j). If the employee returns at the end of the leave and there is no work available, he or she is considered to be laid off and benefits are allowed at that time. *Id.* If the employee fails to report to work at the end of the leave, he or she is considered to have voluntarily quit employment without good cause attributable to the employer and benefits are denied. *Id.* Additionally, an employee who is on a leave of absence is considered to be voluntarily unemployed and disqualified from benefits. Iowa Admin. Code r. 871-24.23(10). Finally, an employee is also disqualified from benefits if he or she is not able to work, under the care of a medical practitioner, and has not been released as being able to work. Iowa Admin. Code r. 871-24.23(35).

Inasmuch as the claimant's medical condition was not work-related and her treating physician has not released her to return to work without restrictions, she has not established her ability to work while still an employee of the employer effective September 11, 2016. While she may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since she has not been released to perform her full work duties, she is not considered able to or available for work. She is currently on a leave of absence effective September 11, 2016. Accordingly, benefits are denied.

DECISION:

The October 4, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective September 11, 2016. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

REMAND:

The case is remanded to the Benefits Bureau for an initial determination and investigation into whether the claimant has been separated from her employment with the employer and if that separation is qualifying. If she has been separated and that separation is qualifying, the Benefits Bureau will also need to determine whether she is able to and available for work following the separation.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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