

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HALEY J KING
Claimant

APPEAL NO: 12A-UI-05179-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERCY HOSPITAL
Employer

**OC: 05/15/11
Claimant: Appellant (1/R)**

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

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 24, 2012 determination (reference 01) that held her ineligible to receive benefits as of March 4, 2012, because of an illness. The claimant participated in the hearing. David Kuehner, her attorney, represented the claimant. Bunny Morrison, the nurse manager of critical care, and Sheryl Knutson appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits from March 7 through April 2, because she requested and was granted a leave of absence.

ISSUE:

When a claimant requests and is granted a leave of absence is she eligible to receive benefits?

FINDINGS OF FACT:

The employer hired the claimant on January 23, 2012, to work as a full-time registered nurse in the intensive care unit. Initially, the employer was satisfied with the claimant's work performance and concluded she was making satisfactory progress with her training.

In late February the claimant told Morrison she was pregnant and experienced morning sickness. Before the claimant told the employer about her pregnancy, the employer noticed that just recently she was not passing training tests and appeared to have problems concentrating.

On March 6, the employer told the claimant about the problems the employer noticed with her tests and lack of concentration may be the result of her not feeling well. The employer gave the claimant two options. First, she could continue working in the job she had been hired to do, but she had to concentrate on her work and the patients. The second option was to take a month's leave of absence for her pregnancy. Even though the claimant was not eligible for Family Medical Leave, the employer would grant her a month's leave of absence if she chose this option.

On March 9, the claimant gave the employer her doctor's note asking the employer to grant the claimant a month's leave of absence for her pregnancy. The employer granted the claimant's leave of absence request for March 7 through April 2.

During her leave of absence, the claimant reopened her claim for benefits the week of March 4, 2012. She filed weekly claims for the weeks ending March 10 through April 7, 2012. The claimant also looked for other work. She applied for a job in another department and started this job on April 2, 2012.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). The law presumes a claimant is not available for work when she requested and is granted a leave of absence. 871 IAC 24.23(10). When a requested leave of absence is granted the law considers this a period of voluntary unemployment and a claimant is not eligible during the leave of absence. 871 IAC 24.23(10).

The facts establish the claimant had the choice of working as a nurse in the intensive care unit or she could request a month's leave of absence for her pregnancy. When the claimant gave the employer her doctor's note, she made the decision to request a leave of absence. Since the leave of absence covered March 7 through April 2, the claimant is not eligible to receive benefits for the weeks ending March 10 through 31, 2012. As of April 1, the claimant is eligible to receive benefits, if she meets all other eligibility requirements.

An issue of overpayment for benefits the claimant may have received for the weeks ending March 10 through 31, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's April 24, 2012 determination (reference 01) is affirmed. When the claimant requested and was granted a leave of absence, the law does not consider her available to work. Since the claimant was not available for work from March 7 through April 2, she is not eligible to receive benefits for the weeks ending March 10 through 31, 2012. As of April 1, 2012, the claimant is eligible to receive benefits, if she meets all other eligibility requirements. The issue of overpayment for benefits the claimant may have received for the weeks ending March 10 through 31, 2012, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css