

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHRYN J DORSEY
Claimant

APPEAL NO. 10A-UI-09449-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR GENERAL
Employer

**Original Claim: 05/16/10
Claimant: Respondent (2-R)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated June 23, 2010, reference 01, which held the claimant eligible to receive unemployment insurance benefits upon a finding that the claimant left work because of illness or injury and, upon recovering, offered to return to work but work was not available. After due notice was issued, a telephone hearing was held on August 19, 2010. The claimant participated personally and testified on her own behalf. Although duly notified, there was no participation the employer.

ISSUE:

At issue is whether the claimant was able and available to receive unemployment insurance benefits.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Kathryn Dorsey began her employment with Dollar General on June 2, 2006, and continues to be employed at the time of hearing. Ms. Dorsey was off work from Dollar General in May 2010 for medical reasons. The claimant applied for and was granted a medical leave of absence under the Family Medical Leave Act. Under the terms of the agreement, the employer agreed to hold Ms. Dorsey's job open for her until she was fully medically released to return to work. When fully medically released, the claimant returned to work as agreed upon under the terms of the leave of absence.

While on the approved medical leave of absence, Ms. Dorsey opened a claim for unemployment insurance benefits because she was receiving no income from Dollar General.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the claimant was able and available for work and eligible to receive unemployment insurance benefits. She was not.

871 IAC 24.23(4) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

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.

The evidence in the record establishes that Ms. Dorsey did not quit her work with Dollar General and subsequently refuse employment when she was fully released. The evidence establishes that the claimant and Dollar General entered into an agreed leave of absence that was negotiated with the consent of both parties. Under the terms of the agreement, the employer agreed to keep the claimant's job open until she was medically able to return to full employment. The evidence in the record establishes that upon being fully released by her physician, the terms of the agreement for the leave of absence were met and the claimant returned to employment.

Because Ms. Dorsey had entered into an approved leave of absence, she is deemed to be voluntarily unemployed during the period of the agreed leave of absence and is ineligible to receive unemployment insurance benefits.

The claimant has received unemployment benefits to which she is deemed not entitled. The question of whether the claimant must repay these benefits is remanded to the Unemployment Insurance Services Division.

DECISION:

The representative's decision dated June 23, 2010, reference 01, is reversed. The claimant is ineligible to receive unemployment insurance benefits, as she was not available for work, having entered into a leave of absence, until her return to work on June 2, 2010. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the Unemployment Insurance Services Division for a determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw