

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEANN A MEYER**

Claimant

**APPEAL NO. 13A-UI-10659-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUTHERAN SERVICES IN IOWA INC**

Employer

**OC: 08/18/13**

**Claimant: Appellant (5)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.5(2)(a) – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Deann Meyer filed a timely appeal from the September 17, 2013, reference 02, decision that denied benefits effective August 18, 2013 based on an agency conclusion that she was unable to work. After due notice was issued, a hearing was held on October 16, 2013. Ms. Meyer participated. Tanya Blasen represented the employer. Exhibit A was received into evidence. Ms. Meyer waived the seven-day notice requirement on the able and available issues. Both parties waived the seven-day notice requirement the separation issues pertaining to Ms. Meyer's June 2013 temporary separation from the employment.

**ISSUES:**

Whether Ms. Meyer was able to work and available for work within the meaning of the law during the four-week period of August 18, 2013 and September 14, 2013.

Whether Ms. Meyer's temporary absence from the employment was a leave of absence or suspension.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Deann Meyer is employed by Lutheran Services in Iowa, Inc., as a full-time Youth Specialist. Ms. Meyer started the position in 1997. Ms. Meyer temporarily separated from the employment during the first week of June 2013, when her supervisor, Deb Swenson, Service Coordinator, told her she would have to off work and not return until she had been released by a doctor to return to work. Ms. Meyer had recently separated from her significant other and was under a great deal of personal stress. Ms. Meyer had reported to Ms. Swenson that she believed she was being followed. Ms. Swenson was concerned for Ms. Swenson's mental wellbeing. The employer told Ms. Meyer that the employer was placing Ms. Meyer on an "FMLA leave." Ms. Meyer did not request a leave and did not complete an application for leave. The employer did not request that Ms. Meyer provide a doctor's certification in support of the purported "FMLA leave."

Once Ms. Meyer was off work, she sought help from her family doctor and was referred to a psychiatrist, Ann Rathe, M.D. Ms. Meyer first saw Dr. Rathe on June 12, 2013. Dr. Rathe diagnosed Ms. Meyer with psychosis – not otherwise specified (NOS), recurrent major depression, panic disorder, and generalized anxiety disorder. Dr. Rathe concluded that Ms. Meyer was “delusional, extremely anxious, and unable to function at work due to impaired concentration, depressed mood, and paranoia.” Dr. Rathe and Ms. Meyer’s primary care physician both recommended that Ms. Meyer not return to work at that time. In a statement dated October 16, 2013, Dr. Rathe adds the following:

Over the next two months, she received intensive outpatient mental health treatment which consisted of psychotherapy and antipsychotic medication. By late August, she had improved to the point where I thought it was safe for her to resume a part-time work schedule. She works at Bremwood, a residential treatment center for mentally ill children and her job exposes her to extreme stress including verbal and physical aggression from the patients. Because of this, I advised her not to return to full-time on 8/26/2013. I thought it was medically necessary for her to transition slowly back to her usual work duties, as full immersion into that stressful setting could have caused her psychosis and anxiety to recur.

As it turns out, the part-time schedule was beneficial, and by 9/16/2013 she was able to return to work full time.

Ms. Meyer returned to the employment part time on Wednesday, August 28, 2013. Ms. Meyer continued to work part time, pursuant to Dr. Rathe’s recommendation until Monday, September 16, 2013 at which time she returned to her full-time duties.

Ms. Meyer established a claim for unemployment insurance benefits that was effective August 18, 2013. Ms. Meyer claimed benefits for a four-week period that ended on September 14, 2013. Ms. Meyer then discontinued her claim for benefits.

Ms. Meyer’s base period wage credits are based on a history of full-time employment with Lutheran Services in Iowa, Inc.

#### **REASONING AND CONCLUSIONS OF LAW:**

The main issue to be addressed in this decision is whether Ms. Meyer met the work ability and work availability requirements during the period of August 18 2013 through September 14, 2013. She did not.

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(1)a and (2) provide:

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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

(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.

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

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.

871 IAC 24.23(35) and (41) provide:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

(41) The claimant became temporarily unemployed, but was not available for work with the employer that temporarily laid the claimant off. The evidence must establish that the claimant had a choice to work, and that the willingness to work would have led to actual employment in suitable work during the weeks the employer temporarily suspended operations.

This rule is intended to implement Public Law 96-499, Iowa Code sections 96.4(3), 96.5(1), 96.6(1), 96.19(38)"c" and 96.29.

First, the evidence indicates that Ms. Meyer did not request a leave of absence. Thus, 871 IAC 24.23(10) does not apply. At the time Ms. Meyer established her claim for benefits she was under the care of a psychiatrist who had not released her to return to any work, part time or full time. Ms. Meyer did not meet the able and available requirements during the week that ended August 24, 2013 because she was under the care of a physician who had not released to return to any work during that week. Ms. Meyer's doctor did not release her to return to *part-time* work until Wednesday, August 28, 2013. Ms. Meyer's doctor did not release her to return to *full-time* work until September 16, 2013. The problem for the weeks that ended August 31, September 7 and September 14, 2013 is that Ms. Meyer's base period wage credits are based on a history of full-time employment. Because of that, Ms. Meyer would not meet the availability requirement during any particular week unless she was available for *full-time* employment during that week. Ms. Meyer was not available for full-time work during any of the four weeks when she had an active claim for unemployment insurance benefits. The reason she was not available for full-time work during those weeks was because her doctor had not released her to return to full-time work during any of those weeks. Because Ms. Meyer did not meet the able and available requirements during the four-week period for which she claimed benefits, she is not eligible for benefits for that period.

The second issue that arose during the hearing was the issue of how Ms. Meyer went off work to begin with. As previously mentioned, Ms. Meyer did not go off work in connection with a voluntary leave of absence, FMLA or otherwise. Instead, the employer initiated a suspension of the employment during the first week of June.

A layoff is a suspension from pay status initiated by the employer without prejudice to the worker. See 871 IAC 24.1(113). In other words a layoff is an involuntary separation that is distinct from a discharge. An employee is deemed *temporarily unemployed*, temporarily laid off, if the individual is involuntarily unemployed from the individual's regular job or trade in which the worked full time and will again work full time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code section 96.19(38)(c). The weight of the evidence indicates that the employer elected to temporarily layoff Ms. Meyer effective the first week of June 2013 and further elected not to allow Ms. Meyer to return to the employment until she was released by a doctor to return. While a temporary layoff would not disqualify Ms. Meyer for unemployment insurance benefits, Ms. Meyer remain ineligible for benefits for the period of August 18 through September 14, 2013 based on the able and available issue addressed above.

#### **DECISION:**

The agency representative's September 17, 2013, reference 02, decision is modified as follows. The claimant was temporarily laid off effective the first week of June 2013. The claimant did not meet the work ability and work availability requirements during the four-week period of August 18, 2013 through September 14, 2013, the period during which her claim was active.

The claimant is not eligible for benefits for the period of August 18, 2013 through September 14, 2013.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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