

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BETTY A NEZERKA
Claimant

NORDSTROM INC
Employer

APPEAL 17A-UI-07536-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/02/17
Claimant: Appellant (1-R)

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) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 24, 2017 (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant requested and was granted a leave of absence and is voluntarily unemployed. The parties were properly notified of the hearing. A telephone hearing was held on August 11, 2017. The claimant, Betty A. Nezerka, participated. The employer, Nordstrom, Inc., participated through Kris Smith, Human Resource Generalist; and Thomas Kuiper of Equifax/Talx represented the employer. The administrative law judge took official notice of claimant's wage records and the administrative record.

ISSUES:

Is the claimant able to work and available for work effective July 8, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time, most recently as a warehouse order picker, beginning April 26, 2010. Claimant commenced a leave of absence on May 6, 2017, due to a non-work-related illness or injury. At the time, claimant was physically unable to stand or walk. She reached out to her department manager, who advised her to contact Human Resources. Ultimately, claimant requested and received a temporary leave of absence. She has received several extensions of this approved leave, and she currently anticipates returning to this employer on October 16, 2017.

Claimant is otherwise able to work. She explained that her position with this employer was physically strenuous, requiring constant standing and walking multiple miles each shift. Claimant is able to work provided she be allowed to sit when necessary. Claimant is currently working as a Direct Support Professional in a group-home setting. This position allows her to sit whenever she needs to and it requires minimal standing and walking. Additionally, this position

does not have any time pressure. Claimant also testified that she is employed with NCS Pearson as a part-time seasonal employee. Claimant is currently laid off from that position.

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 based on her voluntary leave of absence from this employer. She may be otherwise eligible for benefits.

Iowa Code § 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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(10) provides:

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

(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.

The claimant requested and was given a medical leave of absence effective May 6, 2017. She remains on this leave of absence from the employer. As noted above, a claimant who is on a voluntarily leave of absence is considered to be voluntarily unemployed and is disqualified from benefits.

Iowa Admin. Code r. 871-24.27 provides:

871—24.27(96) Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account. This rule is intended to implement Iowa Code section 96.5(1) "g."

See also, McCarthy v. Iowa Emp't Sec. Comm'n, 76 N.W.2d. 201 (Iowa 1956) wherein the court held that persons who become unemployed by a layoff from their full-time employer cannot be disqualified for a previous voluntary quit from a part-time employer. Here, claimant has not voluntarily quit her employment with this employer, but has been temporarily voluntarily separated from the employer while on medical leave. Generally individuals who are on a leave of absence do not qualify for benefits under Iowa law, as it is considered a temporary voluntary separation. However, in claimant's situation, the temporary voluntary separation is not from her full-time employer, but from a supplemental part-time employer. Inasmuch as claimant's temporary separation is without good cause attributable to the employer, she would generally be disqualified from benefits. However, the claimant has not requalified for benefits since the separation but appears to be otherwise monetarily eligible according to base period wages from her full time employer. Thus, she may be eligible for benefits based upon those other wages. This matter will be remanded for a determination of whether claimant is otherwise eligible for benefits.

DECISION:

The July 24, 2017 (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work as she is on an approved leave of absence.

REMAND:

The issues of whether claimant has requalified for benefits and whether claimant is monetarily eligible for benefits based on base period wages from a full-time employer are remanded to the Benefits Bureau of Iowa Workforce Development for initial investigation and determination.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn