

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MUAHIB S MAGOK**  
Claimant

**APPEAL NO. 09A-UI-10643-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SDH EDUCATION WEST LLC**  
Employer

**OC: 06/07/09**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work  
871 IAC 24.23(10) – Requested Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the representative's decision dated July 22, 2009, reference 02, which denied benefits as of June 22, 2009 finding that the claimant was on an approved leave of absence and not available for work. After due notice, a telephone conference hearing was scheduled for and held on August 11, 2009. Ms. Magok participated personally. Although duly notified the employer did not participate.

**ISSUE:**

The in this matter is whether the claimant was on an approved leave of absence and able and available for work.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony and having considered the evidence in the record, finds: Muahib Magok was employed as a full-time kitchen worker for this employer. On or about June 22, 2009 the claimant requested a medical leave of absence to undergo surgery. The claimant expects to be released and return to work on approximately August 27, 2009.

**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.

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(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.

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.

The claimant requested and was granted a leave of absence to undergo surgery. Accordingly, benefits are denied. The claimant was not able and available to work effective June 22, 2009.

**DECISION:**

The representative's decision dated July 22, 2009, reference 02, is affirmed. The claimant is not able and available for work effective June 22, 2009. Benefits are withheld until such time as the claimant makes herself available for work to the extent she was available during the base period history.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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