

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EMILY A WEEKS
Claimant

APPEAL NO. 13A-UI-03869-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLAGGER PROS USA LLC
Employer

OC: 02/03/13
Claimant: Appellant (1)

871 IAC 23.10 – Able and Available/Leave of Absence

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated March 29, 2013, reference 01, which denied unemployment insurance benefits effective February 3, 2013 finding that the claimant requested and was granted a leave of absence and, therefore, was not available for work. After due notice, a telephone hearing was held on May 6, 2013. Claimant participated. The employer participated by Ms. Victoria Benson, Executive Assistant/Human Resource Manager.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Emily Weeks began employment with Flagger Pros USA on July 13, 2012. Ms. Weeks worked as a full-time flagger and was paid by the hour. On November 5, 2012, Ms. Weeks was on a flagging assignment for the company. Due to the unexpected passing of her husband, Ms. Weeks requested time away from work and the claimant's request for a leave of absence was granted. The employer expected Ms. Weeks to notify them when she would again be available for work because the employer did not know when to expect Ms. Weeks' personal issue would be resolved. Additional job assignments continued to be available to Ms. Weeks, however, she did not notify the employer of her availability or have transportation to accept the assignments until the first week of April 2013 when the claimant had notified Flagger Pros USA of her availability and the claimant demonstrated that she had transportation to accept job assignments.

REASONING AND CONCLUSIONS OF LAW:

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)(3) provides:

Benefit 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.

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.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

In the case at hand, Ms. Weeks had requested an open end leave of absence to take care of matters associated with the sudden and unexpected death of her spouse. The employer initially contacted Ms. Weeks approximately one week after beginning the leave of absence to determine if she was able and ready to return to work, however, the claimant was not ready to return to work at that time. The employer then reasonably expected Ms. Weeks to contact them to let the company know when she was available for ongoing work assignments. The employer had work during this period of time, however, the claimant had transportation issues and had not clearly indicated to Flagger Pros USA that she was able to return to work and had sufficient transportation until the first week of April 2013. At that time the claimant's leave of absence came to an end because the claimant had indicated to the employer that she was able and available to return to work.

Although sympathetic to the claimant's situation, the administrative law judge concludes based upon the evidence in the record, that the claimant was on an approved leave of absence and not available for work within the meaning of the Iowa Employment Security Law until the first week of April 2013 when she ended the leave of absence by making herself able and available for work.

DECISION:

The representative's decision dated March 29, 2013, reference 01, denying benefits effective February 3, 2013 upon a finding that the claimant was requesting a leave of absence and, therefore, was not available for work is affirmed.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs