

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHANDRA S OLENICK**  
Claimant

**APPEAL NO: 17A-UI-12178-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SELF-RELIANCE INC**  
Employer

**OC: 03/19/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 22, 2017, reference 01 decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 19, 2017. The claimant participated in the hearing. Megan Williams, Executive Director and Marsha Johnson, Human Resources, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work and whether she is on a leave of absence.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant fell at home October 28, 2017, and broke her left ankle and left elbow and underwent reconstructive surgery on her ankle. She provided the employer with a doctor's note stating she was unable to work. On November 15, 2017, she provided the employer with a doctor's note stating she could work with the restriction of no weight bearing on her left leg. The employer offered her work at its handicapped accessible home but the claimant was not comfortable and still felt unsteady on her feet so she stated she wanted to wait until she went back to the doctor December 7, 2017. The employer placed her on the schedule for December 2017 but on December 12, 2017, she provided the employer with a doctor's note saying she could not work before her follow-up medical appointment February 1, 2018. The claimant has not worked for the employer long enough to qualify for Family and Medical Leave. The employer considers the claimant to be on a leave of absence.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work and is on a leave of absence.

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:

(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 suffered a severe non-work related injury and has not been released to return to work without restrictions. Because the claimant is unable to work, the employer, which is holding her job for her, considers the claimant to be on an informal leave of absence. An employee who is unable to perform her job duties and is effectively on a leave of absence is not considered able and available for work as is required by Iowa law before benefits can be granted. Accordingly, benefits must be denied.

**DECISION:**

The November 22, 2017, reference 01, decision is affirmed. The claimant is not able and available for work and did effectively take a leave of absence from the employer beginning October 28, 2017. 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 and the employer does not have comparable, suitable work available for her at that time.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn