

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVELYN V FREEMAN
Claimant

APPEAL NO. 07A-UI-02291-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC
Employer

OC: 01/21/07 R: 02
Claimant: Appellant (4)

Section 4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

Evelyn V. Freeman (claimant) appealed a representative's March 2, 2007 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits, and the account of Tyson Fresh Meats, Inc. (employer) would not be charged because the claimant voluntarily quit her employment for reasons that do not qualify her to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 22 2007. The claimant participated in the hearing. An interpreter translated the hearing. Terry Carmichael, the employment manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the claimant request a medical leave of absence?

Is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on March 14, 2005. The claimant worked full-time for the employer. The work the claimant performed involved physical labor. After the claimant became pregnant, she experienced pain when she performed her job.

The employer sent the claimant to a doctor who restricted the claimant to light-duty work. The employer then assigned the claimant light-duty work, but the light-duty assignment required the claimant to work in a cold environment. The claimant informed the employer she could not work in the cold environment. The employer did not have any other light-duty work to assign to the claimant.

When the claimant went back to her doctor, her doctor advised the claimant that she should not return to work until her baby was born. On January 8, 2007, the claimant requested and the

employer granted the claimant a leave of absence that ends on May 21, 2007. The claimant's baby is due sometime in April.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, she must be able to and available for work. Iowa Code § 96.4-3. When a leave of absence is negotiated with the consent of both the employer and the claimant, the claimant is considered ineligible for benefits during the leave of absence because this is considered a period of voluntary unemployment. 871 IAC 24.22(2)(3)(j).

Even though the claimant did not believe the employer assigned her appropriate jobs, the facts do not establish that she quit her employment. The employer still considers the claimant an employee who can return to work at the end of her medical leave of absence.

The claimant is currently unemployed because she requested and the employer granted her a leave of absence. The claimant admitted her doctor did not want her to return to work until her baby is born in April 2007. After the claimant's leave of absence ends or she provides the employer with a doctor's release that she is able to return to work, the claimant has continued employment with this employer.

As of January 21, 2007, the claimant is not eligible to receive unemployment insurance benefits because her doctor has restricted her from working and she requested a medical leave of absence. The claimant shall remain ineligible until her leave of absence ends or she establishes that her doctor has released her to return to work for the employer.

DECISION:

The representative's March 2, 2007 decision (reference 01) is modified in the claimant's favor. The claimant did not quit her employment. She is, however, not eligible to receive benefits as of January 21, 2007, because she is not able to work based on her doctor's restrictions and because she became voluntarily unemployed when she requested and was granted a medical leave of absence. The claimant shall remain ineligible to receive benefits until the end of her leave of absence or she establishes that her doctor has authorized her to return to work for the employer without any work restrictions.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css