

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RUBIJA BABIC**  
Claimant

**APPEAL NO. 11A-UI-16559-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 11/13/11  
Claimant: Appellant (2)**

871 IAC 24.23(10) – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated December 22, 2011, reference 02, which denied unemployment insurance benefits effective November 13, 2011, finding the claimant had requested and was granted a leave of absence and therefore was voluntarily employed and not available for work. After due notice, a telephone hearing was held on January 30, 2012. The claimant participated. Participating on the claimant's behalf was Ms. Judith O'Donohoe, attorney at law. Although duly notified, the employer did not respond to the notice of hearing and did not participate. Official interpreter was Zorana Bojnovic.

**ISSUE:**

At issue is whether the claimant was able and available for work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Rubija Babic was employed by Tyson Fresh Meats, Inc. as a production worker. The claimant was allowed to perform light-duty work leading up to November 15, 2011, based upon a previous work injury.

On November 15, 2011, the employer informed Ms. Babic that they would not longer allow her to continue on light duty and were requiring the claimant to return to her "line job." The line job position required the claimant exceed the light-duty limitations that had been imposed by her physician.

When Ms. Babic brought the light-duty limitation to the attention of her employer, the claimant was placed on a leave of absence by the employer without the claimant's agreement or permission. Ms. Babic refused to sign a leave of absence agreement, as she did not wish to enter a leave of absence.

Ms. Babic has actively and earnestly sought employment each week that she has claimed unemployment insurance benefits. Ms. Babic discontinued claiming benefits as of January 4, 2012, after she underwent corrective surgery on January 5, 2012, and has not been claiming unemployment insurance benefits during her rehabilitation period.

## REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant was able and available for work during the period of November 13, 2011, through January 4, 2012. It does.

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.

The evidence in the record establishes that Ms. Babic did not enter into a leave of absence with Tyson Fresh Meats, Inc. The claimant had been assigned light-duty work for a period of time prior to November 15, 2011, when the employer attempted to return Ms. Babic to production line work that exceeded her work limitations. When the claimant reminded the employer of her doctor-imposed limitations, the employer attempted to place the claimant on a medical leave of absence. However, Ms. Babic did not agree to enter into a leave of absence and refused to sign the leave of absence form (See Exhibit 1).

Based upon the evidence in the record, the administrative law judge concludes the claimant was able and available for work for the period of November 15, 2011, through January 4, 2012. On January 5, 2012, the claimant underwent surgery. Ms. Babic was not claiming benefits at the time of hearing, as she recognized that she was not able to work.

**DECISION:**

The representative's decision dated December 22, 2011, reference 02, is reversed. The claimant is able and available for work as of November 13, 2011, and is eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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