

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYSTAL M BOYD

Claimant

APPEAL NO. 08A-UI-04392-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLARD REFRIGERATED SERVICES INC

Employer

**OC: 03/23/08 R: 12
Claimant: Respondent (2)**

Section 96.4(3) – Able and Available
Section 96.3(7) – Recovery of Overpayments

STATEMENT OF THE CASE:

Millard Refrigerated Services, Inc. (Millard) filed an appeal from a representative's decision dated April 25, 2008, reference 03, which allowed benefits to Krystal Boyd effective March 23, 2008, on a finding that she was available for work. After due notice was issued, a hearing was held by telephone on May 21, 2008. Ms. Boyd participated personally. The employer participated by Todd Rogers, General Manager.

ISSUE:

At issue in this matter is whether Ms. Boyd has satisfied the availability requirements of the law since filing her claim effective March 23, 2008.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Boyd began working for Millard on August 8, 2005 and last performed services on or about March 25, 2008. She was last employed full time as an office clerk. She went on a leave of absence rather than risk discharge.

The employer tracks attendance on a point system, and an individual is subject to discharge when she reaches ten attendance points. Ms. Boyd was at ten points for at least one year without being discharged, as the employer was working with her. She learned in August of 2007 that she was pregnant. The employer met with her on March 25, 2008 because of her attendance. She was warned that she might be discharged if she continued to have attendance issues. She was given the option of filing for benefits under the Family and Medical Leave Act (FMLA). The employer was not prepared to discharge Ms. Boyd at the time of the meeting. She was not required to apply for FMLA. She was not told she would be discharged on a specified date if she did not apply for FMLA.

Ms. Boyd filed a claim for job insurance benefits effective March 23, 2008. She has received a total of \$1,034.00 in benefits since filing the claim.

REASONING AND CONCLUSIONS OF LAW:

Ms. Boyd was not required to apply for FMLA. Filing for such benefits was presented to her only as an option so that she could avoid discharge in the event she continued to miss time from work. Ms. Boyd was aware of her attendance history and knew that she could well be discharged if her attendance did not show improvement. She chose to apply for FMLA to avoid a possible discharge in the future. It was not a matter of either apply for FMLA or be discharged for not applying. Based on the foregoing, the administrative law judge concludes that Ms. Boyd voluntarily chose to apply for a leave of absence when she could have continued working until her child was born.

An individual who is on a requested leave of absence is considered voluntarily unemployed for the duration of the leave. 871 IAC 24.22(2)j. An individual is not considered available for work when she is on a requested leave of absence. 871 IAC 24.23(10). Inasmuch as Ms. Boyd was on a requested leave of absence, she was not available for work within the meaning of Iowa Code section 96.4(3). Accordingly, benefits are denied.

Ms. Boyd has received benefits since filing her claim. Based on the decision herein, the benefits received now constitute an overpayment and must be repaid. Iowa Code section 96.3(7). An overpayment in the amount of \$1,034.00 has already been established by Workforce Development.

DECISION:

The representative's decision dated April 25, 2008, reference 03, is hereby reversed. Ms. Boyd is denied benefits effective March 23, 2008, as she was voluntarily unemployed because she was on a requested leave of absence. Benefits are denied until such time as she satisfies Workforce Development that she is again available for work, provided she satisfies all other conditions of eligibility. Ms. Boyd has been overpaid \$1,034.00 in job insurance benefits.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw