

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEBBIE L HASS
Claimant

APPEAL NO: 06A-UI-10020-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ELECTROLUX HOME PRODUCTS INC
FRIGIDAIRE**
Employer

**OC: 07-23-06 R: 01
Claimant: Appellant (1)**

Iowa Code § 96.4(3) - Able and Available
Iowa Code § 96.5(5)c – Short Term Disability Pay

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 5, 2006, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 30, 2006. Claimant participated. Employer participated through LaVonne Russell and Casey Sciorrotta. Claimant's Exhibit A was received. The administrative law judge took judicial notice of the administrative record.

ISSUE:

The issues are whether is able to and available for work and if sickness and accident pay should be deducted from benefits.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed as a full time operator wiring stat consoles and last worked July 26, 2006 when employer placed her on involuntary medical leave. Employer would not let her work because of diagnosed narcolepsy even though the condition had been diagnosed and she had been on the same medications for the past two and one-half years under the treatment of The Mayo Clinic, Drs. Spencer, Gannon, Wolfe, Bernard. She has advance warning (weakness) of an episode and can get to the nurse in time. She notified employer of her condition in December 2003 and it allowed her to continue working. She does not work around dangerous equipment or under other conditions where her medical condition might be considered a safety risk. Her attacks did get more frequent since March 2006 and claimant attributed it to stress related to harassment due to her medical condition. Employer did not set an appointment with their physician as it claimed it would after it requested its own medical review. Employer's nurse never sent her home after an episode but sent her back to the floor to resume her duties.

Claimant receives sickness and accident pay of \$225.00 gross per week effective the first week of August 2006.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective July 23, 2006.

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".

871 IAC 24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Inasmuch as the medical condition was not work-related but employer had accommodated the same medical restrictions (allowing claimant to visit the company nurse when she had advance warning of an episode) for the past two and one-half years and the diagnosis, restrictions and medications had not changed, claimant has established her ability to work. Inasmuch as the employer is not providing claimant with her regular duties as it had during her recent employment history effective July 23, 2006, claimant is able to and available for work. Weekly

benefits of \$109.00 are allowed after deduction of the sickness and accident pay benefits of \$225.00 from claimant's weekly benefit amount (WBA) of \$334.00.

DECISION:

The representative's decision dated October 5, 2006, reference 02 is affirmed. The claimant is able to work and available for work effective July 23, 2006. Benefits after deduction of sickness and accident pay are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs