

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARION J HUNT
Claimant

APPEAL NO. 06A-UI-10106-L

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITY HEALTH SYSTEM
Employer

**OC: 09-17-06 R: 04
Claimant: Appellant (5)**

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the October 9, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 5, 2006 in Davenport, Iowa. Claimant participated with Rick Hunt. Employer participated through Delores Stecher and Lynn Volkl.

ISSUE:

The issue is whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed most recently as a part-time central supply aide through September 11, 2006, her last day of work. Both parties agree she is still considered an employee. Claimant had a non-work-related head injury on July 15, 2005 when she was employed as a surgery technician. She was off work 5.5 months and returned to work in accordance with her work restrictions. She was showing signs of forgetfulness and having trouble performing her duties without supervision so employer moved her to a supply aide/sterilization technician in March 2006 after Dr. Allen, employer's doctor, met with her neurosurgeon and they agreed she could try the sterilization job. She worked in that job until the meeting with Lynn Whitlow, Stecher and Volkl on September 11, 2006. By that time she had often become teary eyed, was not sure when she would "blow up" or get depressed and said she could not tell in advance when this would happen. She also had memory issues and mood swings to the point that supervisor, Lynn Whitlow and department head Vokel became concerned she could not perform her job accurately or work without supervision. She had difficulty remembering what she needed to do next so employer asked her to get a fitness for duty release with Dr. Allen and she refused because she had no health insurance by that time. Stecher suggested she could go to work in food and nutrition services full-time, same rate of pay until she could get insurance and go to the doctor. She declined saying the job was "beneath her." Her Family Medical Leave Act (FMLA) had expired and Stecher gave her paperwork to fill out for an extension but claimant declined to go to her doctor in Iowa City. Employer offered to work with her to find low cost or free health insurance through Iowa Cares (she was later found not to be qualified). She was not able to

see Dr. Allen until after an evaluation by the neurosurgeon. Claimant quit communicating with employer on October 2.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective September 17, 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 physician and has not been released as being able to work.

Inasmuch as claimant ceased communication with employer and declined to complete leave of absence paperwork and/or see her treating neurologist so employer's physician could consult on her ability to work in various types of jobs, she is not able to or available for work until she complies with employer's reasonable requests.

DECISION:

The representative's decision dated October 9, 2006, reference 01 is modified with no effect on the outcome of the decision. The claimant is not able to work and available for work effective September 17, 2006. Benefits are withheld until such time as the claimant complies with employer's reasonable requests for information and cooperation.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css