

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TANA D BUCHMAN

Claimant

APPEAL NO: 11A-UI-14694-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 10/16/11

Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's November 7, 2011 determination (reference 01) that held her ineligible to receive benefits as of October 16, 2011, because she was not able to work. The claimant participated in the hearing. Chris Buchman appeared as a witness for the claimant. Gail O'Connor, the store manager, and Curtis Fox, the area supervisor, appeared on the employer's behalf. During the hearing, Claimant Exhibit A that consisted of her doctor's work restrictions for September, October and November 2011. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant's restrictions require her to look for a tailor-made job to the extent that she is not eligible to receive unemployment insurance benefits.

ISSUE:

As of October 16, 2011, is the claimant able to and available for work?

FINDINGS OF FACT:

In September 2010, the claimant started working as a part-time cashier for the employer. The claimant's job required her to lift more than 25 pounds at times, to bend, twist, and pull and to stand while working. The employer hired the claimant to work around 20 hours a week.

As the result of a non-work-related injury or condition on April 28, 2011, the claimant gave the employer her doctor's work restrictions. The work restrictions included no lifting over 25 pounds, no repetitive twisting, bending, and pulling and breaks every two hours. The claimant's physician indicated the claimant could work full time. The employer accommodated these work restrictions by having the claimant work during the day with another employee. These work restrictions were in effect until October 17. The claimant's work restrictions prevented her from doing about 50 percent of her job duties.

On October 17, the claimant's physician indicated she could only work five hours a day instead of eight hours. The claimant's physician reduced the hours she could work to four hours a day on November 16, 2011. (Claimant Exhibit A.)

When the employer received the October 17 work restrictions that limited the claimant to working five hours a day, the employer could only accommodate her if she would work weekends and nights. The claimant was not willing to change the hours she worked. The employer then informed the claimant that even though she was still considered an employee, the employer could not schedule her to work the same shift after her physician limited the hours she could work a day. As of October 16, the employer considered the claimant on an unpaid medical leave of absence.

The claimant established a claim for benefits during the week of October 16, 2011. The claimant has filed claims since October 16, 2011.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). The law presumes a claimant is not available for work when a claimant is not willing to work during the hours in which suitable work for the claimant is available. 871 IAC 24.23(16). The facts establish the employer was willing to accommodate the claimant's work restrictions when the claimant was not restricted to work less than eight hours a day. Even if the claimant did not work eight hours a day during the summer months, the employer had the ability to schedule her work eight hours a day before mid-October. After her mid-October doctor's appointment, the claimant's physician restricted her to working no more than five hours a day. The employer could not accommodate all her work restrictions unless the claimant worked nights and weekends. When the claimant was not willing change the shift she worked, the employer could not accommodate her non-work-related work restrictions and placed the claimant on an unpaid medical leave.

As of October 16, the facts do not establish that the claimant is able to and available to work for the employer. When a claimant has work restrictions as the result of a non-work-related injury, the employer is not required to accommodate the work restrictions. In this case, the employer tried to work with the claimant, but she was unwilling to work during the hours in which suitable work was available for her and in which the employer could accommodate all her work restrictions. After the claimant's physician restricted the number of hours she could work from eight to five and then four, the evidence does not establish that the claimant is available to work. The claimant established she is unwilling or not able to work the hours the employer could accommodate her work restrictions. As of October 16, 2011, the claimant is not eligible to receive benefits because of the change in her work restrictions in October and November.

DECISION:

The representative's November 7, 2011 determination (reference 01) is affirmed. The claimant is not eligible to receive benefits as of October 16, 2011, because the work restrictions she has

and the hours she is willing to work make her unavailable for work. The claimant remains ineligible until she reopens her claim and establishes that she no longer has work restrictions that limit her availability for work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs