

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CARLA M SAGERS  
6072 – 82<sup>ND</sup> AVE  
MAQUOKETA IA 52060

MAQUOKETA CARE CENTER INC  
1202 GERMAN ST  
MAQUOKETA IA 52060

Appeal Number: 04A-UI-12835-DT  
OC: 10/31/04 R: 04  
Claimant: Respondent (4)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.19-38-b – Eligibility for Partial Unemployment Insurance Benefits  
Section 96.4-3 – Able and Available  
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Maquoketa Care Center, Inc. (employer) appealed a representative's November 29, 2004 decision (reference 01) that concluded Carla M. Sagers (claimant) was qualified to receive unemployment insurance benefits in conjunction with her employment with the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 22, 2004. The claimant participated in the hearing. Sharon Ehlinger appeared on the employer's behalf. During the hearing, Employer's Exhibit One and Claimant's Exhibits A through E were entered into evidence. Based on the evidence, the arguments of the

parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### FINDINGS OF FACT:

The claimant started working for the employer on November 1, 1996. She worked full time as a certified nursing aide (C.N.A.) in the employer's long-term care nursing facility. In 1998, she suffered a work-related injury to her back that caused a chronic herniated disc condition with occasional acute pain episodes.

On September 18, the claimant was off work doing some cleaning at home. She turned wrong and set off her back to the point she could not stand up due to the pain. She called in sick the following week and went to her regular doctor, who had an MRI performed. The MRI indicated there was no new structural damage compared to the work-related damage that occurred in 1998. However, the claimant's regular doctor instructed her to stay off work until the orthopedic specialist, Dr. Found, could see her.

Her appointment with Dr. Found was October 14, 2004. On October 18, 2004, the claimant brought the employer a copy of Dr. Found's release stating that the "patient may return to work under the guidelines of the previously recommended restrictions." (Claimant's Exhibit A.) The claimant also informed the employer that the Dr. Found was referring the claimant for a new functional capacity evaluation (FCE), as the most recent evaluation had been in 2000. The employer was not clear on what the "guidelines of the previously recommended restrictions" were – the most recent medical restrictions of which the employer was aware was a "statement of work limitations" issued by the claimant's regular doctor on October 11, 2001 indicating that the claimant could return to work on regular duty with no limitations. (Employer's Exhibit One.) The claimant thought that the reference was to the 2000 FCE that had specified various functions and limitations, or to her regular doctor's "statement of work limitations" dated February 19, 2001 indicating that while the claimant could return to work it was on limited duty with specified limitations of no lifting, carrying, or pushing/pulling of over 16 pounds, no repetitive bending, lifting, and no twisting of the neck or back; the limitations as indicated on the February 19, 2001 statement were designated to be in effect "permanently." (Claimant's Exhibit B.)

As a result of the confusion, on October 20, 2004 the employer sent Dr. Found a request for clarification. Although the claimant was asking to be returned to work as of October 18, the employer deferred, at least pending a response from Dr. Found to clarify the restrictions. On or about November 18, the employer received a response from Dr. Found dated November 15 indicating that in his opinion, "she is capable of working as a C.N.A., with the exception of repetitive heavy lifting greater than 50 lbs. She may otherwise participate in all the activities required of a C.N.A." (Claimant's Exhibit C.)

The employer was still uncomfortable returning the claimant to work, and determined to wait until the new FCE was done and the results received. The FCE was done on November 29. The results were delivered to the employer on December 13, and the claimant returned to work on December 14 with no restrictions but for a 60-pound lifting restriction.

The claimant established an unemployment insurance benefit year effective October 31, 2004, seeking unemployment insurance benefits for the period of time after the October 14 release from Dr. Found until her return to work. Her weekly benefit amount was calculated to be \$267.00, which she received for each of the weeks ending November 6, November 13, November 20, December 4, and December 11, 2004.

## REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is eligible for unemployment insurance benefits while she was off work after October 31, 2004, when she filed a claim requesting unemployment insurance benefits for the weeks in which she had no wages because the employer had not allowed her to return to work.

Iowa Code section 96.3-3 provides:

3. Partial unemployment. An individual who is partially unemployed in any week as defined in section 96.19, subsection 38, paragraph "b", and who meets the conditions of eligibility for benefits shall be paid with respect to that week an amount equal to the individual's weekly benefit amount less that part of wages payable to the individual with respect to that week in excess of one-fourth of the individual's weekly benefit amount. The benefits shall be rounded to the lower multiple of one dollar.

Iowa Code section 96.19-38-b provides in part:

b. An individual shall be deemed partially unemployed in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

The claimant had weeks after she filed her claim effective October 31, 2004 in which she was not working her regular full-time hours. Beginning on or about October 18, 2004, the employer was not providing the claimant with substantially the same employment as it provided during her base period. Consequently, the claimant is qualified to receive partial unemployment insurance benefits upon the filing of her claim effective October 31, 2004, provided she was otherwise eligible.

The question then is whether the claimant was otherwise eligible by being able and available for work.

Iowa Code section 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.

If a person is unable to work due to personal injury, or where she is under the care of a medical practitioner and has not been released as being able to work, she is not eligible for unemployment insurance benefits. 871 IAC 24.23(34), (35). This is true whether the injury is work-connected or not. In this case, the doctor's release provided to the employer on October 18 (dated October 14) was ambiguous as to whether the claimant could perform the required work. While it was the doctor whose statement was ambiguous, the doctor was acting on behalf of the claimant, and so such ambiguity as to demonstrating her ability to work is attributable to her. Therefore, until the ambiguity was sufficiently clarified, the claimant did not demonstrate that she was able and available for work. However, the doctor's statement provided to the employer on November 18 (dated November 15) provided prima facie evidence of the claimant's physical ability to perform the work required; the employer offered no medical evidence to the contrary to rebut the doctor's statement.

While it is correct that where a separation from employment has occurred due to a non-work related injury, an employer is not required to return an employee to employment unless or until the employee can demonstrate a complete recovery without restriction, Iowa Code section 96.5-1-d, Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985), that does not apply where there is a work-related connection to the injury. Where an employee is compelled to leave work (or prevented from returning to work) due to a work-related injury or medical condition, the employee need not demonstrate a "full recovery," and will be eligible for unemployment insurance benefits where the employer fails to make the necessary accommodations for the medical restrictions. 871 IAC 24.26(6)b While the triggering event that set off the claimant's September acute back pain occurrence was not work-connected, the underlying medical condition that created the potential for the incident was caused by a work-related injury. After the claimant satisfactorily demonstrated that her doctor was permitting her to return to work with the 50-pound lifting restriction, the employer could either make the accommodations to allow the claimant to return to work with the restriction or could allow the claimant to claim unemployment insurance benefits until such time as it did permit her to return to work. Benefits are allowed effective the week ending November 20, 2004.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant was not eligible until the issuance of her doctor's statement on November 15, 2004 clarified that she was sufficiently able and available for work, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The unemployment insurance decision dated November 29, 2004 (reference 01) is modified in favor of the employer. The claimant is eligible for unemployment insurance benefits for the period beginning November 14 through December 11, 2004 due to the employer's failure to provide sufficient work with accommodations. The claimant is not eligible for the weeks ending November 6 through November 11, due to failing to adequately demonstrate her availability for work. The claimant is overpaid benefits in the amount of \$534.00.

ld/pjs