

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VERONICA THIENGMANY
Claimant

APPEAL 23A-UI-09799-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONTROLLER
Employer

**OC: 02/12/23
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available – Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy

STATEMENT OF THE CASE:

Claimant filed an appeal from the October 4, 2023, (reference 03) unemployment insurance decision that denied benefits effective September 17, 2023, based on the deputy's conclusion that the claimant was still employed in an on-call job in the same capacity as in the original contract of hire and was not unemployed within the meaning of the law. After due notice, a telephone hearing was held on October 31, 2023. Claimant participated personally through Lao-English interpreter Mayblia (#14339) of CTS Language Link. The employer participated through Senior Human Resources Manager Mike Owens. The administrative law judge took official notice of the administrative record.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning September 17, 2023.

Whether the claimant was partially and/or temporarily unemployed for the period beginning September 17, 2023.

Whether the employer's account may be charged for benefits for the period beginning September 17, 2023.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed by Mackay Mitchell Envelope Company since 1992. The employment has historically been full-time and the claimant has historically worked three or four 12-hour shifts per week. The claimant's assigned shift hours have historically been 5:30 a.m. to 5:30 p.m. The claimant's regular work duties involve stuffing envelopes, placing the envelopes into boxes and placing the boxes onto a skid or pallet. The boxes can weigh 20 pounds or more. The regular work and work movements are repetitive in nature, with repetitive bending and lifting.

The claimant has for years suffered from chronic shoulder and neck pain. On March 23, 2023, the claimant's medical provider placed the claimant on a 10-pound lifting restriction. The claimant provided the medical restriction document to the employer on April 6, 2023. From April 6 through April 30, claimant was on an approved period of "voluntary layoff." Upon the claimant's return to the employment in May 2023, the claimant did not perform her regular duties and instead performed light-duty work when the employer had such work available. The light duty work included separating envelopes that were stuck together. However, the employer does not need this task performed on a regular basis. The employer also assigned cleaning duties that could be performed within the claimant's lifting restriction. Though the employer continued to have the claimant's regular full-time work available, the employer only provided part-time light-duty work and had no such work available during some weeks. The employer would contact claimant when the employer had light-duty work available for claimant.

The claimant established an "additional claim" for benefits that was effective July 2, 2023. After the claimant established the additional claim, she made weekly claims for the six weeks between July 2, 2023 and August 12, 2023. On September 22, 2023, Administrative Law Judge Timberland issued a decision holding that claimant had not been able to work and available for work during the period from July 2, 2023 through August 12, 2023, because claimant was not able to perform her regular work duties due to a chronic health condition that had not been attributed to her employment. The administrative law judge held that claimant would continue to be ineligible for unemployment insurance benefits until such time as she reactivates her claim, commences making weekly benefits, and demonstrates that she is able to work and available for full-time work. See Appeal No. 23A-UI-07855-JT-T.

Claimant filed a second "additional claim" for benefits that was effective September 17, 2023. After establishing her second additional claim, claimant made weekly claims for the two weeks ending September 30, 2023. As of the date of the hearing, claimant's medical provider has not lifted claimant's medical restrictions and claimant has not been released to return to work without restriction. At the hearing, claimant provided no medical evidence attributing her health condition to her employment. On October 2, 2023, claimant returned to work with the employer full-time in a new, light duty position.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

Generally, courts and administrative tribunals do not decide issues when the underlying controversy is moot. *Rhiner v. State*, 703 N.W.2d 174, 176 (Iowa 2005). "A case is moot if it no longer presents a justiciable controversy because the issues involved are academic or nonexistent." *Iowa Bankers Ass'n v. Iowa Credit Union Dep't*, 335 N.W.2d 439, 442 (Iowa 1983).

Iowa Code section 96.6 creates the jurisdictional structure and parameters by which unemployment insurance issues are to be decided. The Benefits Bureau serves as the first level decision maker. The Appeals Bureau serves as the second-level adjudicator. The Employment Appeal Board serves as the third-level adjudicator. Unless appealed in a timely manner and reversed on appeal, a finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of Iowa Workforce Development, administrative law judge, or the Employment Appeal Board, is binding upon the parties in proceedings brought under this chapter. See Iowa Code section 96.6(3) and (4).

As such, the decision issued by Administrative Law Judge Timberland denying benefits effective July 2, 2023 remains in effect. See Appeal No. 23A-UI-07855-JT-T. However, adjudication of whether a claimant is able to work and available for work is a week-by-week analysis.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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".

Iowa Admin. Code r. 871-24.22(1)(a) and (2) 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.

...

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1),(20) and(35) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

...

(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.

Iowa Administrative Code rule 871-24.2.(1)(g) provides as follows:

(g). No continued claim for benefits shall be allowed until the individual claiming benefits has completed a continued claim or claimed benefits as otherwise directed by the department.

(1) The weekly continued claim shall be transmitted not earlier than 8 a.m . on the Sunday following the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on Friday following the weekly reporting period.

An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993).

This matter concerns the period beginning September 17, 2023 through the week that ended September 30, 2023. Because the claimant did not make weekly claims for the weeks after September 30, 2023, she cannot be considered for benefits for that period.

The weight of the evidence indicates that during the period of September 17, 2023 through the week that ended September 30, 2023, claimant was not able and available for work within the meaning of the law. During that period, the employer continued to have the claimant's regular, full-time work available, but claimant was under a 10-pound lifting restriction and was not able to perform her regular work duties. Inasmuch as claimant's medical condition was not work-related and her medical provider had not released claimant to return to work without restrictions, claimant has not established her ability to work from September 17 through September 30, 2023, while still an employee of MacKay Mitchell Envelope Company. Although claimant may be able to perform light-duty work, the employer is not obligated to accommodate a non-work-related medical condition or injury. Because claimant was not released to perform her full work duties, claimant was not able to or available for work from September 17 through September 30, 2023. As such, claimant is not eligible for unemployment insurance benefits.

DECISION:

The October 4, 2023, (reference 03) unemployment insurance decision is affirmed. Claimant is not able to or available for work as of September 17, 2023. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.



Patrick B. Thomas
Administrative Law Judge

November 7, 2023
Decision Dated and Mailed

PBT/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.