

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LOIS R KEELING**  
Claimant

**APPEAL NO: 13A-UI-00776-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VANTEC INC**  
Employer

**OC: 12/16/12**  
**Claimant: Appellant (1/R)**

Iowa Code § 96.4(3) – Ability to Work

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's January 18, 2013 determination (reference 01) that held her ineligible to receive benefits as of December 16, 2012, because she was unable to work as the result of an injury. The claimant participated in the hearing with her attorney, Frederick James. Dennis Peterson, with Merit Resources, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of December 16, 2012.

**ISSUE:**

As of December 16, 2012, is the claimant able to work and eligible to receive benefits?

**FINDINGS OF FACT:**

The claimant worked for the employer as a full-time machine operator. The claimant was restricted from using her right hand as of May 22, 2012. The claimant is right handed. As a result of the work restriction, the employer made accommodations for the claimant and assigned her one-handed work. The employer considered the work restriction the result of a work-related injury.

In late November 2012, the workers' compensation doctor released the claimant to work without any work restrictions. The claimant still had problems with her right hand and went to a specialist. The specialist again restricted the claimant from doing any work with her right hand. The claimant understands she needs surgery again to correct complications that occurred from the first surgery.

After the claimant gave the employer the work restrictions from the specialist, the employer informed the claimant they could no longer accommodate her work restrictions and asked her to complete paperwork for a leave of absence. The claimant completed the necessary paperwork so the employer would still consider her an employee.

The claimant's last day of work for the employer was November 26, 2012. She filed a claim for benefits during the week of December 16, 2012. The claimant is looking for work that does not

require her to use her right hand. The claimant has applied for work as a cashier at convenience stores and answering phones for other businesses. She can sweep with her left hand. The claimant can only use her right hand for a limited time to write messages. When the claimant applied for a job at a can redemption center she learned this employer did not have work that met her work restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claim files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). Since the employer required the claimant to sign paperwork for a leave of absence, the claimant's leave of absence does not make her ineligible to receive benefits. 871 IAC 42.23(1)0. The evidence establishes the claimant would have continued working for the employer if they employer would have continued assigning her one-handed work.

The fact the claimant is not currently able to work for the employer does not automatically establish she is not able to work and ineligible to receive benefits. But, the fact she is unable to use her dominant hand to do any work establishes that she is essentially looking for a tailor-made job, which unduly limits work she is able to do. As a result, the claimant is not eligible to receive benefits as of December 16, 2012.

If the claimant's work restriction changes, she can reopen her claim for benefits for the Department to determine if she is then eligible to receive benefits.

This matter will be remanded to the Claims Section to determine if the claimant has been overpaid any benefits she may have received since December 16, 2012.

**DECISION:**

The representative's January 18, 2013 determination (reference 01) is affirmed. Based on the claimant's work restriction, she is not able to perform work that is not tailor-made for her. Therefore, as of December 16, 2012, the claimant is not eligible to receive benefits. As issue of overpayment is **Remanded** to the Claims Section to determine based on benefits the claimant may have received since December 16, 2012.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs