

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AMY K REMINGTON
Claimant

APPEAL NO. 10A-UI-07487-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS COMM SCHOOL DIST
Employer

**OC: 04/18/10
Claimant: Appellant (2)**

Iowa Code Section 96.5(2)(a) – Discharge
Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Amy Remington filed a timely appeal from the May 18, 2010, reference 01, decision that denied benefits effective April 18, 2010. After due notice was issued, a hearing was held on July 12, 2010. Ms. Remington participated. Stephanie Krause, Human Resources Specialist, represented the employer. Exhibit A was received into evidence.

ISSUES:

Whether Ms. Remington is off work for a reason that disqualifies her for unemployment insurance benefits.

Whether Ms. Remington has been able to work and available for work since she established the claim for unemployment insurance benefits that was effective April 18, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: In May 2008, Amy Remington began working for the Cedar Rapids Community School District as a full-time childcare assistant in a year-round preschool/daycare operated by the school district. Ms. Remington's work hours were 7:30 a.m. to 5:30 p.m., Monday, Tuesday, Thursday and Friday. Ms. Remington's immediate supervisors were Sheryl Stramel, Daycare Director, and Kim Entringer, Assistant Daycare Director. Kim Hayslet, Daycare Coordinator, and Karen Leesekamp, Assistant Daycare Coordinator, were above Ms. Stramel and Ms. Entringer in the employer's hierarchy. Ms. Remington is currently pregnant and is expected to give birth on or about July 24, 2010.

On April 7, 2010, Ms. Remington was experiencing Braxton Hicks contractions and consulted with an obstetrician. On April 8, 2010, the obstetrician imposed two medical restrictions. The first was that Ms. Remington's workday be limited to eight hours. The second was that Ms. Remington be allowed to sit when possible. Ms. Remington immediately provided documentation of the medical restrictions to the employer. Ms. Remington last performed work for the employer on Monday, April 12, 2010. Ms. Hayslet sent Ms. Remington home that day

after Ms. Remington had worked approximately one hour because the employer was unwilling to accommodate Ms. Remington's medical restrictions and deemed it unsafe for Ms. Remington to continue in the workplace with her restrictions. The employer gave Ms. Remington the choice of commencing a leave of absence or resigning from the employment. Given those options, Ms. Remington chose the leave.

At the beginning of July, after notice of the appeal hearing has been mailed to the parties and hearing was set for July 12, 2010, the employer notified Ms. Remington that she could return to work. At the same time, the employer inquired whether Ms. Remington was under the same medical restrictions. When Ms. Remington indicated she was, the employer reiterated that Ms. Remington could not return to work until after she had delivered her baby.

Ms. Remington has been subject to no other medical restrictions and has had no change in health. While the three four-year-old children in Ms. Remington's care had been curious about her pregnancy, Ms. Remington had been able to perform her duties despite the pregnancy.

REASONING AND CONCLUSIONS OF LAW:

The weight of the evidence indicates that the employer suspended Ms. Remington from the employment effective April 12, 2010. This case is similar to a case decided by the Iowa Supreme Court in 1989, where in a nursing assistant provided the employer with a 25-pound lifting restriction and the employer compelled the nursing assistant to commence an involuntary leave of absence. The court held that the employer's actions effectively discharged the employee from the employment and that the separation would not disqualify the employee for unemployment insurance benefits. The court indicated that the remaining issue to be decided was whether the employee had been able to work during the period of the suspension. See Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989). The weight of the evidence in the record indicates that Ms. Remington was able to perform her duties with minor accommodations. The employer had a duty to make reasonable accommodations, had the ability to provide reasonable accommodations, but elected not to. See Sierra v. Employment Appeal Board, 508 N.W.2d 719, 723 (Iowa 1993). The administrative law judge notes that the children in Ms. Remington's care would have been in a similar situation, and at no greater risk, had they been in the care of a pregnant mother. The employer suspended Ms. Remington for no disqualifying reason. See Iowa Code section 96.5(2)(a). Ms. Remington would be eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to Ms. Remington.

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.

871 IAC 24.22(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.

(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.

The weight of the evidence indicates that Ms. Remington's limited restrictions—an eight-hour workday and sitting, when possible--did not prevent her from being able to work and available for work. Ms. Remington met the able and available requirements of Iowa Code section 96.4(3) from the effective date of her claim and continued to meet those requirements as of the July 12, 2010 hearing. Effective April 18, 2010, Ms. Remington was eligible for benefits, provided she was otherwise eligible.

DECISION:

The Agency representative's May 18, 2010, reference 01, decision is reversed. The claimant was suspended for no disqualifying reason effective April 12, 2010. The claimant has been able and available for work she established the claim that was effective April 18, 2010. Effective April 18, 2010, the claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css