

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

THERESA L LARSON
Claimant

APPEAL NO. 06A-UI-10859-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COMPREHENSIVE SYSTEMS INC
Employer

**OC: 09/03/06 R: 03
Claimant: Appellant (1)**

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated November 1, 2006, reference 03, that concluded the claimant was not able to work. A telephone hearing was held on November 29, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Terra Wood, Attorney at Law. Sheryl Pringle participated in the hearing on behalf of the employer with a witness, Carolyn Olson. Exhibits A through D and 1 and 2 were admitted into evidence at the hearing.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full-time for the employer as a direct support staff worker in the employer's group home for individuals with disabilities from November 11, 2000, to July 31, 2005. Her job involved stooping, bending, crouching on the floor, and lifting clients.

The claimant has had periodic problems with back pain since 1994 for which she has received treatment. She was treated for lower back pain after helping push a car that had gotten stuck in December 2000. Afterward, an MRI of her spine was evaluated by her doctor as within normal limits. She also was cleared to work with no work restrictions after a physical examination done on January 22, 2004.

On August 1, 2005, she was admitted to the emergency room after the onset of lower back pain. After further treatment and evaluation by doctors, she was diagnosed with a bulging disk in her back. The claimant's work duties for the employer were a substantial factor contributing to her injury or aggravated her pre-existing medical condition.

The claimant notified the employer that she was unable to work due to back problems. She continued to be off work due to her back and discussed taking a medical leave. On August 9, 2005, the claimant met with her supervisors and the personnel director, Sheryl Pringle, regarding taking a medical leave of absence. At that time, she did not assert her injury was

work-related, but instead said she'd had back problems since the incident in which she pushed the car out of the snow in December 2000. Pringle informed the claimant that in order to be approved for a medical leave of absence under the Family and Medical Leave Act, she needed to have a doctor's statement excusing her from work. The claimant said she would keep in contact with the employer. No specific requirements were established about the frequency in which the claimant was to contact the employer.

On August 10, 2005, the claimant submitted a letter to the employer from her personal doctor stating: (1) the claimant had been hospitalized for severe lower back pain, (2) she'd had back pain for an extended period of time but it worsened with transferring clients, (3) lifting would aggravate her back problems, and (4) she would be off work at least six weeks when he would reassess her condition. Based on the letter, the employer approved her medical leave.

On September 30, 2005, the claimant's doctor submitted a second letter to the employer stating: (1) she continued to have back pain, which had been found to be associated with a disk defect, (2) her symptoms were the same but her back pain had improved since she was off work, and (3) she had an appointment for a second opinion regarding surgery on December 12.

An independent medical evaluation was conducted on May 11, 2006, by Farid Manshadi, M.D. In his medical report dated August 3, 2006, he concludes the claimant has restrictions that prevent her from performing any activity requiring continuous bending or stooping at her waist or lifting over 25 pounds on a continuous basis. He concludes she probably will need to have back surgery. He concludes on page 5: "She is currently unable to work... ." The doctor also concludes on page 3 that the claimant has constant low back pain that "becomes worse with walking and standing activities. . . . She is unable to wash dishes for more than 5 minutes at a time. She is unable to do any cleaning, vacuuming, or any laundry. For activities of daily living she cannot stay in the shower for too long as the pain becomes so severe that she needs to sit down."

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 3, 2006, and was required to contact two employers every week. Her work restrictions as of September 3, 2006, and continuing until the time of the hearing were the same as set forth in the doctor's report of August 3, 2006.

The claimant could only recall applying for positions as a movie theater ticket taker, a rural newspaper delivery person (twice), and a transcription position at a local hospital. The claimant would not be able to perform such work considering her medical condition and/or her work qualifications. She does not have a high school diploma and has not passed the high school equivalency test. She has not had any training to work as a medical transcriber and would not be qualified for such a job.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3.

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The claimant has the burden to establish she is able to perform such work. The

medical evidence and the claimant's testimony fail to establish the claimant was able to work as of September 5, 2006, up to the time of the hearing.

DECISION:

The unemployment insurance decision dated November 1, 2006, reference 03, is affirmed. The claimant is ineligible to receive unemployment insurance benefits as of September 3, 2006. If circumstance change, the claimant must reapply for benefits and establish that she meets the requirements of being able to and available for work.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css