

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAMELA S STRONG
Claimant

APPEAL NO. 08A-UI-01599-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TOWN CRIER LTD
Employer

**OC: 02/03/08 R: 02
Claimant: Respondent (1)**

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(b) – Partial Unemployment
Iowa Code Section 96.7(2)(a)(2) – Employer Liability

STATEMENT OF THE CASE:

Town Crier, Ltd., filed a timely appeal from the February 13, 2008, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on March 3, 2008. Claimant Pamela Strong participated. Randy Rolffs, President, represented the employer.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant is receiving the same employment from the employer that she received during her base period,

Whether the employer's account may be charged for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Pamela Strong commenced her employment with Town Crier, Ltd., on October 2004. Ms. Strong worked as a full-time machine operator until 2007. In July 2007, Ms. Strong began to experience symptoms of what was ultimately diagnosed in December 2007 as chronic fatigue syndrome. Ms. Strong's medical condition resulted in her working less than full-time hours during the period of July through December 2007.

On December 4, the Department of Internal Medicine at the University of Iowa Hospitals and Clinics (UIHC) provided Ms. Strong with documentation of her chronic fatigue syndrome diagnosis. The health care provider recommended that Ms. Strong be moved to a less physically demanding job. Up to this point, the employer had continued Ms. Strong on full-time employee status, but had accommodated Ms. Strong's need to work reduced hours. When Ms. Strong received the UIHC documentation of her diagnosis, she provided this documentation to the employer.

During the second week of December 2007, Ms. Strong met with the employer to discuss her diagnosis and the impact of the diagnosis on her employment. All individuals involved in the meeting, including Ms. Strong, agreed that she was physically unable to continue as a full-time machine operator. Ms. Strong and the employer agreed to change Ms. Strong to part-time status and have her fill in as needed at the workplace. The employer discussed with Ms. Strong its plan to hire a full-time employee to operate the machine to which Ms. Strong had previously been assigned. Ms. Strong was to train the new employee and would continue to operate the machine on a fill-in basis. All parties involved thought Ms. Strong could expect to receive 20-30 hours per week in the part-time, less physically taxing duties.

Ms. Strong continued to average approximately 20 hours per week until January 8, 2008, when she injured her knee in the course of performing her work duties. Ms. Strong had previously injured her knee and the new workplace injury aggravated the prior injury. Ms. Strong returned to work the next week, but had to utilize crutches. Ms. Strong was no longer physically able to operate the machine to which she had previously been assigned. Ms. Strong continued to perform other duties in the workplace.

Ms. Strong did not establish a claim for unemployment insurance benefits until the week of February 3, 2008. The claim for unemployment insurance benefits was prompted by a seasonal slowing of production at the Town Crier. During the slow down, Ms. Strong had received fewer than 15 hours per week. Ms. Strong received 5 hours one week and 11 hours another week. The employer expects that Ms. Strong's work hours will return to the 20-30 hours per week when business picks back up.

REASONING AND CONCLUSIONS OF LAW:

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, (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.

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 workweek and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code section 96.19(38)(b).

If the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2).

The evidence indicates that Ms. Strong and the employer had agreed to change Ms. Strong's employment from full-time to part-time in December 2007. The evidence indicates that Ms. Strong and the employer expected Ms. Strong would thereafter work 20-30 hours per week. The evidence indicates that the formal transition to part-time employment merely made permanent the temporary work arrangement that had started in July 2007. Part-time employment of 20-30 hours per week became a new "established" condition of the employment. The evidence indicates that despite Ms. Strong's diagnosis of chronic fatigue, Ms. Strong was able to perform her duties under the new conditions of her employment. The evidence indicates that any further reduction in Ms. Strong's ability to work was related to the work-related injury she suffered on January 8, 2008. The employer would have a duty to accommodate the work-related injury so as to allow Ms. Strong to continue in the employment. Despite the work-related knee injury, Ms. Strong has continued to be able to engage in gainful employment. The administrative law judge concludes that Ms. Strong has, up to this point, satisfied the work ability requirements of Iowa Code section 96.4(3). The evidence indicates that Ms. Strong has continued to make herself available for the part-time work the employer has for her and, therefore, has satisfied the work availability requirements of Iowa Code section 96.4(3) up to this point.

The evidence indicates that Ms. Strong is not working the 20-30 hours per week that she had been working prior to filing her claim for benefits and prior to the slowdown in production. The employer's account may be charged for benefits paid to Ms. Strong. Because work availability and ability must be demonstrated on a week-by-week basis, the employer will have the opportunity in the future to challenge Ms. Strong's eligibility for benefits, and the employer's

liability, if and when Ms. Strong returns to the previously instituted 20-30 hour per week work schedule.

DECISION:

The Agency representative's February 13, 2008, reference 01, decision is affirmed. The claimant has been able and available for work since establishing her claim for benefits. Accordingly, the claimant is eligible for benefits. The employer's account may be charged for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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