

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TARYN E WEAVER
Claimant

O'REILLY AUTOMOTIVE INC
Employer

APPEAL NO. 14A-UI-11843-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/19/14
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) – Availability Disqualifications

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated November 7, 2014, reference 01, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on December 8, 2014. Claimant participated personally. Employer participated by Kevin Mallison, Store Manager. Employer's Exhibits One through Three were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was suffering from an injury that occurred ten years earlier that was being exacerbated by her current employment. Claimant had taken time off during the summer months, and she did not have any sick leave or FMLA time available to her effective August 29, 2014.

Employer notified claimant in writing on August 21, 2014 that her FMLA leave days would be exhausted on August 28, 2014. Claimant was notified on that date that she would be required to return to work at the end of her FMLA period.

Claimant was released back work but with a 10-pound weight restriction during this time. Claimant had been working as an assistant manager, and her position required her to be able to lift 25 pounds. Employer would not allow claimant to return to work until she was released back to work with at least a 25-pound weight lifting restriction.

Claimant requested light duty and wanted to return to work on or before August 28, 2014, but she was not allowed to work by employer with her then current lifting restriction. Claimant was healing from the treatment she had received and was going to be released with no restrictions

on or about October 11, 2014. Claimant requested that she be placed on leave until that date so she could resume working at that time. Her request was denied. On August 29, 2014 claimant's employment was terminated and her position was filled by employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective October 19, 2014.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(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.

The Court found no separation from employment and allowed partial benefits where claimant's work aggravated chronic lung disease prevented him from full-duty work but he reported daily for assignments as available. *FDL Foods v. Emp't Appeal Bd. and Lambers*, 460 N.W.2d 885 (Iowa Ct. App. 1990).

The Supreme Court ruled that a claimant with a non-work-related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

Inasmuch as the medical condition was not work related but employer permanently filled the job before she was released to return to work; and when the treating physician had released her to return to work without restriction no suitable, comparable work was available, claimant has established her ability to and availability for work.

Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The representative's decision dated November 7, 2014, (reference 01) is affirmed. The claimant is able to work and available for work effective October 19, 2014. Benefits are allowed, provided she is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css