IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

PAULA E STRONG
Claimant

HILL & VALLEY PREMIUM
Employer

APPEAL NO. 07A-UI-09010-SWT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 06/23/07 R: 04
Claimant: Appellant (4)

871 IAC 24.26(6)b – Work-Related Medical Condition
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 19, 2007, reference 03, that concluded she was not able to work due to illness. A telephone hearing was held on October 8, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Richard Harper participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant has not been required to look for work. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a bakery facility. The ovens in the bakery are well-insulated, but the plant is not air conditioned and the temperature inside the plant generally is the same as the outside temperature during the summer.

The claimant worked for the employer from July 2 to August 5, 2007. Initially, she worked as a depositor, which involved depositing batter onto pans. Later, she transferred to a packaging position; In addition to packaging, the job also involved pushing heavy racks of baked goods and extended periods of standing.

During the time period the claimant worked for the employer, she developed a severe case of swollen ankles that made it difficult for to her to stand for long periods of time. During the month that she worked for the employer, outside temperatures were high. Consequently, the temperatures in the plant were extreme and the clamant was encouraged to drink lots of liquids. As of August 5 2007, the claimant was no longer able to stand on her feet during her entire shift.

After August 5, 2007, the claimant began calling in sick due to the problems with her ankles that she believed were aggravated by the heat in the plant and the manual labor required in the job. The claimant had broken her ankle in 2003 but had fully recovered from that injury. She was concerned, however, that the problem was related to her earlier injury, so she scheduled an appointment with an orthopedic specialist for August 10, 2007.

She was examined by the orthopedic specialist on August 10, 2007. The doctor observed the swelling but found it was not due to any bone or joint problems. He diagnosed the condition as foot and ankle swelling and probable tendonitis. He told the claimant that the swelling could be due to fluid retention due to the work environment and drinking fluids. He advised her to find light duty or sit down work until the swelling subsided. He told her that he could not do any more for her and told her to follow up with a general practitioner. The doctor excused the claimant from work though August 13 and prepared a letter for the employer dated August 14, 2007.

The doctor's letter was submitted to the employer. The claimant informed the human resources director, Richard Harper, about her doctor's advice. She asked the employer if there was any light-duty work, or clerical work that would not involve standing for her whole shift. Harper informed the employer that the employer did not have any work available.

Harper told the claimant that she should look into telemarketing work. The clamant told him that she did not want to quit the job before she got another job. He told her that the employer could not terminate her as long as she was under a doctor's care and called in to report her absences because it would be treated as one occurrence. He said the only way that she would be terminated would be if she was a three-day no call, no show. The clamant has continued to call in each day and has not quit. The employer has not terminated her employment.

The claimant's work history is primarily clerical work that would not require extended standing. She has also worked at Kentucky Fried Chicken but did not have any problems with swollen feet or ankles.

The claimant could not get in to see a doctor immediately due to lack of money. The earliest she could get into a low income medical clinic was October 2, 2007. Her ankles and feet had returned to normal. The doctor certified that the only restriction placed on her was not to work in a hot environment. The claimant has been looking for jobs within those restrictions.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

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 problem here is that until October 2, 2007, the only medical evidence available stated that that the claimant was able to work "as tolerated." This did not establish the claimant was able to work in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. As of October 2, 2007, the only restriction placed on the claimant's availability was not to work in a hot environment. This restriction would not prevent the claimant from work in some reasonably suitable, comparable, gainful, full-time endeavor that

she is qualified to perform. She is able to and available for work effective October 2, 2007, if she is otherwise qualified.

Since the claimant has not quit, has not been terminated, and has not refused an offer of suitable work, she is not disqualified on that basis. She is required to report any separation from employer or refusal of work.

Although the claimant has not quit, her situation resembles 871 IAC 24.26(6)b. The unemployment insurance rules provide that a claimant is qualified to receive benefits if compelled to leave employment due to a medical condition attributable to the employment. The rules require a claimant: (1) to present competent evidence that conditions at work caused or aggravated the medical condition and made it impossible for the claimant to continue in employment due to a serious health danger and (2) to inform the employer before quitting of the work-related medical condition and that the claimant intends to quit unless the problem is corrected or condition is reasonably accommodated. 871 IAC 24.26(6)b. She would not be subject to disqualification for quitting her employment unless circumstances change.

The employer's account is not presently chargeable for benefits paid to the claimant, since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

Finally, the Agency records indicate the claimant has not been required to look for work or register for work. Since the claimant has been unemployed for more than four weeks, she is required to register for work and make at least two job contacts per week pursuant to 871 IAC 24.2(1)c(3).

DECISION:

The unemployment insurance decision dated September 19, 2007, reference 03, is modified in favor of the claimant. She is able to and available for work effective October 2, 2007, if she is otherwise qualified. She is required to register for work and make at least two job contacts per week

_____
Steven A. Wise
Administrative Law Judge

_____
Decision Dated and Mailed

saw/kjw