

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER L WAKEEN
Claimant

US CENSUS
Employer

APPEAL 17A-UI-09945-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/06/17
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 19, 2017, (reference 04) unemployment insurance decision that denied benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on October 16, 2017. Claimant participated. Employer did not participate. Claimant's Exhibit A was received.

ISSUES:

Is the claimant able to work and available for work effective August 6, 2017?
Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in April 2013. Claimant is employed as a part-time, intermittent field representative.

Claimant was on voluntary medical leave from May 12 through August 2, 2017. On June 29, 2017, claimant's doctor diagnosed her with a paralyzed vocal cord. The condition was not caused by her employment.

On August 2, 2017, claimant's doctor released her to return to work with an accommodation of using an assisted talking device. The same day, claimant requested an accommodation from employer. Employer considered the request and finally at the end of September 2017, employer approved the request. Claimant was supposed to return to work on October 6, 2017. Employer has not assigned claimant to return to work, and claimant's supervisor is waiting from a response from the Chicago office on why claimant has not been assigned to return to work.

REASONING AND CONCLUSIONS OF LAW:

As a preliminary matter, claimant's voluntary leave of absence ended before she filed her claim for benefits, so that issue is moot and will not be discussed further in this decision.

The only issue to be resolved is whether claimant is able to and available for work. For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective August 6, 2017.

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4(3).

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.

In this case, claimant's doctor released her to return to work on August 2, 2017, with an accommodation. Iowa Code § 216.6 requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Employer eventually approved claimant's request for an accommodation, but has not returned her to work for unknown reasons.

Claimant has established she is able to work as of August 6, 2017. Therefore, benefits should be allowed as of that date.

DECISION:

The September 19, 2017, (reference 04) unemployment insurance decision is reversed. The claimant is able to work and available for work effective August 6, 2017. Benefits are allowed, provided she is otherwise eligible.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn