

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MINKA MEHIC

Claimant

APPEAL NO. 15A-UI-05690-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRITE BEGINNINGS INC

Employer

OC: 02/08/15

Claimant: Appellant (2/R)

Iowa Code Section 96.4(3) – Able & Available
Iowa Code Section 96.19(38)(c) – Temporary Layoff

STATEMENT OF THE CASE:

Minka Mehic filed a timely appeal from the May 5, 2015, reference 02, decision that denied benefits effective April 19, 2015, based on an Agency conclusion that she was unwilling to work during the times when work in her occupation is often done and that this was unduly restricting her availability for work. After due notice was issued, a hearing was held on July 23, 2015. At the time of the hearing, Ms. Mehic was not available at the number she had provided for the hearing and did not participate. Alex Glenn, Director of Human Resources, represented the employer. Exhibits One through Six and A through D were received into evidence. The administrative law judge took official notice of the Agency's administrative record of Ms. Mehic's weekly claims for benefits.

ISSUES:

Whether the claimant was able to work and available work effective April 19, 2015, when she established her additional claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Minka Mehic established an original claim for benefits for benefits that was effective February 8, 2015. Ms. Mehic made weekly claims for the weeks ending February 14, 2015 and February 21, 2015, but did not receive any benefits for those weeks. Ms. Mehic established an additional claim for benefits that was effective April 19, 2015, but did not commence making weekly claims for benefits at that time. Ms. Mehic reopened her claim for benefits effective May 24, 2015. Ms. Mehic then made weekly claims for the weeks ending May 30, 2015 and June 6, 2015. Ms. Mehic then ceased making weekly claims.

Brite Beginnings, Inc., d/b/a Generation Next Child Development Center & Preschool is the sole base period employer for purposes of the claim year that started for Ms. Mehic in February 2015. Ms. Mehic began her employment with Generation Next in 2009 and last performed work for the employer on April 20, 2015. At that time, Ms. Mehic was working as a full-time "floater" at the employer's Johnston facility. Ms. Mehic's work hours had been 8:00 a.m. to 4:30 p.m.,

Monday through Friday. Her supervisor was Mary Beth Corrigan, Regional Director. Ms. Mehic is a non-native English speaker with very limited English language skills.

On September 22, 2014, Ms. Mehic reported to the employer that she had suffered injury at work while picking up a child. The employer arranged for Ms. Mehic to receive medical evaluation at Mercy Clinics in Clive and at Occupational Medicine Plus, P.C. in Clive, in connection with a worker's compensation claim. Thereafter, Ms. Mehic was intermittently off work for up to two days at a time upon the direction of the worker's compensation doctor. As of October 7, 2014, the doctor had restricted Ms. Mehic to lifting no more than five pounds. On October 13, 2014, the medical provider provided Ms. Mehic with a Return to Work document that took Ms. Mehic off work. As of October 18, 2014, the doctor had restricted Ms. Mehic to working not more than six hours at a time. The doctor has also limited Ms. Mehic to lifting and/or pushing no more than 10 pounds. The employer modified Ms. Mehic's duties to ensure that she would not have to diaper children. From November 18, 2014 to December 18, 2014, the doctor restricted Ms. Mehic to working no more than six hours per shift. On a number of occasions thereafter, Ms. Mehic requested to leave work early due to pain. The employer approved her early departures at the time they occurred. On January 28, 2015 the doctor took Ms. Mehic off work through January 29, 2015.

On February 17, 2015, Karen Glenn, owner and Administrator, notified Ms. Mehic that she was being placed on unpaid leave due to her ongoing and unresolved back pain issues. Ms. Mehic had not requested a leave of absence. They deemed this unrequested leave to be leave under the Family and Medical Leave Act and counted Ms. Mehic's time away from work in the 12-week FMLA maximum. On February 18, 2015, Ms. Mehic had a follow up medical appointment. At that time, the doctor released Ms. Mehic to perform modified work duties and restricted Ms. Mehic from lifting over 10 pounds or pushing/pulling over 25 pounds. In addition, the doctor indicated that Ms. Mehic should avoid repetitive bending/twisting. The doctor directed Ms. Mehic to continue her medication and to return in two weeks. Ms. Mehic returned to the employment on February 19, 2015. As of March 27, 2015, the medical documentation indicated that Ms. Mehic could stand and/or walk as tolerated. By April 2015, Ms. Mehic's condition did not appear to have improved. Ms. Mehic had continued to leave work early on a regular basis.

On April 14, 2015, Ms. Mehic reported to her supervisor that a child had bumped her leg and had thereby caused her back to spasm. Ms. Mehic indicated that she was unable to complete her shift. Karen Glenn, owner and Administrator, transported Ms. Mehic home. The employer notified Ms. Mehic that she would have to provide certification of her fitness for duty before she would be allowed to return to the employment. On April 16, 2015, the employer provided Ms. Mehic with a form that the employer expected Ms. Mehic to present to the worker's compensation doctor, so that the worker's compensation doctor could certify Ms. Mehic's ability to perform work. The employer, not the doctor, had taken Ms. Mehic off work. On April 17, 2015, Ms. Mehic saw the worker's compensation doctor as directed.

On Monday, April 20, 2015, Ms. Mehic returned to work and delivered the requested paperwork to Ms. Corrigan. Ms. Mehic stayed and continued to perform her work duties until 3:34 p.m. On April 20, 2015, the employer noted that the doctor had not written on a number of the pages in the paperwork the employer had provided. The doctor had released Ms. Mehic to work, but had not specifically indicated whether Ms. Mehic could work with children or whether she could be included in the state mandated staffing ratio. Ms. Mehic desired to continue in the employment, but the employer was unwilling to allow her to continue without a more detailed statement of her ability to perform work.

The employer deemed Ms. Mehic to have exhausted her available FMLA leave effective May 6, 2015.

On May 27, 2015, Ms. Mehic had a follow up appointment with at Occupational Medicine Plus. At that time, the doctor released Ms. Mehic to perform modified duty, but restricted her from lifting more than 10 pounds, from pushing/pulling more than 25 pounds. The doctor indicated that Ms. Mehic could stand and walk as tolerated. The doctor indicated that Ms. Mehic should continue the medications prescribed by another doctor. The doctor indicated that Ms. Mehic should keep her scheduled appointment with a specialist and should return for a follow up visit in a month.

REASONING AND CONCLUSIONS OF LAW:

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 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".

Iowa Admin. Code r. 871-24.22(1)a, and (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 full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b). An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code Section 96.19(38)(c).

This decision is supposed to address Ms. Mehic's ability to work and availability for work effective April 19, 2015. The evidence in the record establishes that on April 20, 2015, Ms. Mehic presented the employer with a medical release that allowed her to perform the same modified duties she had been performing since September 2014. The employer found the doctor's release insufficient and temporarily laid off Ms. Mehic effective April 20, 2015. The evidence indicates that Ms. Mehic continued to be available for work with the employer, but that the employer declined to make further work available. Because Ms. Mehic was temporarily laid off effective April 20, 2015, she was eligible for benefits effective April 19, 2015 provided she met all other eligibility requirements.

Because the evidence in the record indicates that there was in fact a separation from the employment subsequent to the temporary layoff imposed on April 20, 2015, this matter will be remanded to the Benefits Bureau for adjudication of the separation.

DECISION:

The May 5, 2015, reference 02, is reversed. The claimant was able and available for work but temporarily laid off effective April 20, 2015. The claimant is eligible for benefits effective April 19, 2015, provided she is otherwise eligible. The employer's account may be charged for benefits in connection with the temporary layoff.

This matter is remanded to the Benefits Bureau for adjudication of the separation.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs