

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SABAHETA DZANIC
Claimant

APPEAL 15A-UI-00561-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 12/21/14
Claimant: Appellant (1)**

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(1) – Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) – Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 9, 2015, (reference 03), unemployment insurance decision that denied benefits based upon not being able to or available for work. After due notice was issued, a telephone conference hearing was scheduled to be held on March 6, 2015. Claimant participated through interpreter Janja Pavetic-Dickey and was represented by Bruce Stoltze, Jr., Attorney at Law. Claimant's Exhibits 1 and 2 were received. The employer participated through human resource director Vicki O'Brien and was represented by Patrick Waldron, Attorney at Law.

As to the findings of fact or reasoning and conclusions of law in this decision, any reference to the work-relatedness of claimant's medical condition is specific to this unemployment insurance benefits determination only and is not binding on the issue of claimant's entitlement, if any, to workers' compensation benefits. That issue falls within the authority of the Iowa Workers' Compensation Commissioner.

ISSUE:

Is the claimant able to and available for work effective December 21, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has a pending contested workers' compensation claim with employer Deerfield, where the work-relatedness of the medical condition and the claimant's ability to work are at issue. The employer terminated the employment on December 23, 2014, because she failed to return to work after release by employer-selected medical care providers Jennisch and Butterfield. (Claimant's Exhibit 1) Her last day of work was August 14, 2014. From June 13, 2013, through

August 14, 2014, she was working with restrictions accommodated by the employer when taken off work by personal psychiatrist David Drake, D.O., who has not yet released her to return to work with or without restriction. (Claimant's Exhibit 2) Her next appointment is March 12, 2015. She last saw employer-selected psychiatrist Jennisch on February 26, 2015. He had originally diagnosed her with depression but opined it did not keep her from working. In January 2015, claimant saw Irving Wolfe, D.O., neurologist at the University of Iowa, who found she did not have a neuropsychological condition, gave her a restriction against loud noise but allowed her to return to work. She also saw Craig Butterfield MLFT, who wrote in a May 5, 2014, letter to Waldron, claimant had no need for work restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective December 21, 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 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 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 physician and has not been released as being able to work.

Because the claimant was separated from employment, the work-relatedness of the condition is not applicable to her medical ability to work since then. While there is a dispute between the claimant's personal psychiatrist and the employer-selected psychiatrist about her ability to work, claimant has not presented consistent evidence of her release to work, with or without restrictions. Thus, she has not established her ability to work since her separation from employment on December 24, 2014. Generally, for the purposes of unemployment insurance benefits, an employer is not obligated to accommodate a non-work related or aggravated medical condition. Similarly, after an involuntary separation from employment a claimant is no longer obligated to return to the employer upon medical release to offer services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given any medical restrictions. At the point of ability to work, claimant must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The January 9, 2015, (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective December 21, 2014. Benefits are withheld until such time as the claimant obtains a medical release to return to work.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs