BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

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KATHERINE COLLEY	:	
	:	**HEARING NUMBER:** 20BIWDUI-0215
Claimant	:	
	:	
and	:	**EMPLOYMENT APPEAL BOARD DECISION**
WELLS FARGO BANK NA	:	
	:	
Employer	:	

N O T I C E

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A, 96.5-1

D E C I S I O N

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Board modifies the Reasoning and Conclusions of Law by adding the following:

> The Claimant argues that her condition was aggravated by her working conditions. We find that as that concept is used in the Employment Security Law this is not the case.
>
> The Claimant has a condition and some of its symptoms are activated by conditions at work. This does not make the condition “work aggravated” within the meaning of the Iowa Employment Security Law. Merely by having job duties that are inconsistent with medical restrictions does not transform the medical condition into a work aggravated condition.

In *White v. Employment Appeal Board*, 487 N.W.2d 342, 345 (Iowa 1992) the Supreme Court explained the attribution rules in health quit cases:

> We have held that an illness-induced quit is attributable to one's employer only under two circumstances. First, when the illness is either "caused or aggravated by circumstances associated with the employment," regardless of the employee's predisposition to succumb to the illness, … Second, when the employer effects a change in the employee's work environment such that the employee would suffer aggravation of an existing condition if she were to continue working…. An illness or disability may correctly be said to be attributable to the employer even though the employer is free from all negligence or wrongdoing in connection therewith.

Even a pre-existing health condition that is aggravated by the job is attributed to the Employer under *White. See also Ellis v. Iowa Dep't of Job Serv.*, 285 N.W.2d 153, 156-57 (Iowa 1979) (claimant's showing that recently installed Christmas tree would aggravate her pre-existing allergies was sufficient to constitute a "quit" that was attributable to her employer). Unlike worker's compensation, where the condition must arise out of and be in the course of employment, the Employment Security Law is not concerned only with the ultimate cause of the condition. Under *White*, and *Ellis,* and the regulations it is enough that there be "[f]actors and circumstances directly connected with the employment, which caused or aggravated the illness." 871 IAC 24.26(6)(b).

But a medical condition is not "aggravated" by the employment, such that a resulting quit can be attributable to the employment, merely because the duties required are such that they activate symptoms. This is commonly the case for many situations where the medical condition is not related to the employment. For example, an employee's back injury suffered while shoveling snow at home may make it dangerous for him to continue working heavy construction but that does not mean that the back injury can be attributable to the construction work. And if he tries to lift at work and his back hurts that is still not aggravation unless or until the underlying condition is made worse by tasks performed at the employer. The attribution rule requires that the condition be either caused by or aggravated by the employment – not merely that the condition be incompatible with previously required duties.

This is made plain by considering the statutory scheme. Iowa Code §95.5(1) disqualifies persons who voluntarily leave employment. An exception to this disqualification is if they voluntarily leave on the advice of a physician and then return. If just being told you have to quit because of your health meant that you are not disqualified to begin with then why would the Code set out a requirement that you also have to return to work in order to start collecting benefits? A claimant who is told by a physician to quit can requalify only if he returns and offers her services once fully released. 871 IAC 24.26(6)(a); *Hedges v. Iowa Dept. of Job Service*, 368 N.W. 862 (Iowa 1985). But if just having a condition that is inconsistent with your job duties makes that condition work-related then the fully healed requirement would be pointless since an employee who was not "fully released" to perform duties would, under the such an argument, *ipso facto* be suffering from a job related condition and *Hedges* would not apply. The statutory requirements and the binding precedent simply evaporate under this reading of the law and so it is clear this reading is incorrect. Moreover, this is not a case where the Employer changed the job conditions and this change was inconsistent with the worker's health condition. *See Ellis v. Iowa Dep't of Job Serv.*, 285 N.W.2d 153, 156-57 (Iowa

1979) (claimant's showing that recently installed Christmas tree would aggravate her pre-existing allergies was sufficient to constitute a "quit" that was attributable to her employer).

Remand on Able and Available

The evidence at hearing raises the issue of whether the Claimant is able to work, and also whether she is available for work on the same basis on during the base period.

On ability the regulations state:

> 24.22(1)(b). Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

871 IAC 24.22. Given the evidence on the Claimant's limitations, and given the requirements of the law, we remand the question of ability to work to the Benefits Bureau of Iowa Workforce Development.

On availability the regulations provide:

> 24.22(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.
>
> > a. Shift restriction. The individual does not have to be available for a particular shift. **If** an individual is available for work on the **same basis on which the individual's wage credits were earned** and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.
> > …
> > f. Part-time worker, student—other. Part-time worker shall mean any individual who has been in the employ of an employing unit and has established a pattern of part-time regular employment which is subject to the employment security tax, and has accrued wage credits while working in a part-time job. If such part-time worker becomes separated from this employment for no disqualifiable reason, and providing such worker has reasonable expectation of securing

other employment for the same number of hours worked, no disqualification shall be imposed under Iowa Code section 96.4(3). **In other words, if an individual is available to the same degree and to the same extent as when the wage credits were accrued, the individual meets the eligibility requirements of the law.**

871 IAC 24.22.

Thus, a claimant collecting benefits on full-time wage credits may not limit her availability to only part-time work. Were it otherwise someone who has full-time credits could decide only look for part-time jobs while collecting full benefits. Plus, they could quit those jobs any time they like without consequence since the quit disqualification does not apply to part-time work. 871 IAC 24.27(1). Even more anomalous such a claimant would not even have to accept any of the part-time work applied for. A person on benefits is disqualified for refusing suitable work, but under the statute the wage rate has to be enough to be "suitable." So, for example, if occurring in the first five weeks of employment an offer has to be for work that is 100% of the "gross weekly wages" earned in the base period. Iowa Code §96.5(3)(a)(1)(a); see Biltmore Enterprises, Inc. v. Iowa Dept. of Job Service, 334 N.W.2d 284, 287 (Iowa, 1983). So, assume a claimant works full-time in the base period and is laid off. Now that claimant is either injured and unable to work full-time, or simply chooses to move to part-time to spend more time with family etc.. If such a claimant could look exclusively for part-time work at the same wage rate or lower, then that claimant could turn all of it down because the weekly pay is too little. And this could go on indefinitely since the lowest the person ever has to accept is 65% of the gross weekly wage from the base period. Furthermore, the person could accept part-time work and collect partial benefits thus using the unemployment fund to supplement a choice, or even a medical need, to go to a part-time schedule. While social security retirement income, and disability benefits may be designed for such uses, the Employment Security Law is not. Thus, we remand the question of availability to work to the Benefits Bureau of Iowa Workforce Development.

The **Decision and Order** is modified to add the following:

The issues of whether the claimant is able to work, and whether she is available to work are remanded to the Benefits Bureau of Iowa Workforce Development.

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Ashley R. Koopmans

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James M. Strohman

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Myron R. Linn

RRA/fnv