

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARLETA D FOSTER**  
Claimant

**APPEAL NO. 08A-UCFE-00024-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**US POSTAL SERVICE**  
Employer

**OC: 07/27/08 R: 02**  
**Claimant: Appellant (5)**

Iowa Code section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Arleta Foster filed a timely appeal from the August 28, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 17, 2008. Ms. Foster participated. Angie Pettinger, Labor Relations Specialist, represented the employer. Exhibits A, B and C were received into evidence.

**ISSUE:**

Whether there has been a separation from the employment that disqualifies Ms. Foster for unemployment insurance benefits. There has not.

Whether Ms. Foster has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Arleta Foster has been an employee of the United States Postal Service since 2002 and became a full-time, permanent mail carrier in October 30, 2004. Ms. Foster suffers from severe degenerative disc and joint disease of the cervical, thoracic and lumbar spine. Ms. Foster has constant pain that requires daily medication. Ms. Foster's medical condition took a turn for the worse in February 2008 and began to make her work duties unbearable.

Ms. Foster last performed full-time mail carrier duties on or about July 26, 2008. On July 28 through August 1, 2008, Ms. Foster was on a scheduled vacation. On July 30, 2008, Ms. Foster obtained a document from her doctor, Ronnie Hawkins, M.D. Dr. Hawkins' note states as follows:

Arleta has severe degenerative disc and joint disease of the cervical, thoracic and lumbar spine. She had constant pain, requiring medication daily. I recommend that she stop carrying mail because it aggravates her neck and back pain. Your consideration of this matter is greatly appreciated.

Ms. Foster provided the note to her immediate supervisor on or about July 30. Ms. Foster's supervisor asked Ms. Foster to get clarification from her doctor regarding what duties she could and could not perform. On August 2, 3, 4, and 5, Ms. Foster called in sick due to her medical condition. Ms. Foster had previously been approved for intermittent leave under the Family and Medical Leave Act (FMLA) and utilized her FMLA leave on these days. On or about August 5, Ms. Foster or her doctor sent the employer a second copy of the July 30 note that contained handwritten restrictions below the typed text. Dr. Hawkins indicated that Ms. Foster could sort or "case" mail in preparation for delivery of her assigned route. Dr. Hawkins restricted Ms. Foster from lifting more than 10 pounds. Dr. Hawkins restricted Ms. Foster from driving. In other words, Ms. Foster could prepare mail for delivery, but could not deliver the mail. On July 31, Ms. Foster sent a message to the Post Master in which she requested light-duty work. Ms. Foster has not yet received a response from the Post Master. Effective August 6, Ms. Foster reported for work for the two to two and a half hours it took to "case" the mail for her delivery route and then went home for the rest of the day. Ms. Foster continued to be in pain when sitting or standing.

On September 3, Ms. Foster saw Dr. Hawkins for a follow-up appointment. Dr. Hawkins provided her with a note that states as follows:

This pt. was seen in my office on 9/3/08. She continues to have severe neck, shoulder and back pain. I recommend that she be released from work and apply for permanent disability.

Ms. Hawkins delivered the note to the employer and has performed no further work for the employer. Ms. Hawkins continues to call in absences on a daily basis. It is Ms. Foster's understanding that Dr. Hawkins does not want her to return to her work at the Postal Service. Ms. Foster's medical condition prevents her from performing gainful employment. Ms. Foster cannot sit or stand without pain, cannot drive, and cannot lift more than 10 pounds.

The employer has not discharged Ms. Hawkins from the employment and Ms. Foster has not notified the employer that she intends to quit. Ms. Foster's medical condition will not improve. Ms. Foster does not expect to return to prior duties at the Postal Service and has started the process of applying for disability benefits.

## **REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The weight of the evidence indicates that there has been no separation from the employment. Both parties confirm there has been no separation from the employment. The weight of the evidence indicates that Ms. Foster continues to be an employee of the Postal Service. Because there has been no separation, there would be no basis for disqualifying Ms. Foster for unemployment insurance benefits based on a conclusion that there was disqualifying separation.

The actual issue in this case is whether Ms. Foster has met the work ability and work availability requirements of Iowa Code section 96.4(3) since she established her unemployment insurance claim on July 27, 2008. The evidence indicates she has not.

Iowa Code section 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".

871 IAC 24.22(1)a and (2) provide:

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.

Workforce Development rule 871 IAC 24.23 provides in relevant part as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

24.23(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

24.23(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

24.23(32) The claimant is ineligible for benefits because no search for work was made during the period such claimant was on vacation unless the provisions of Iowa Code section 96.19(38)(c) are met.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The greater weight of the evidence in the record indicates that Ms. Foster has not been able to engage in any full-time work since she established her claim for benefits. Since before Ms. Foster established her claim for unemployment benefits, she has suffered from a debilitating and progressively worsening medical condition. The evidence indicates that as of August 5, Ms. Foster's doctor had imposed significant medical restrictions that severely limited the amount of work and type of work Ms. Foster was able to perform and available to perform. The evidence indicates that Ms. Foster was unable to perform even the limited work allowed by her doctor without experiencing significant pain. This situation prompted Ms. Foster's doctor to take her off work completely and to recommend that Ms. Foster pursue disability benefits.

Because Ms. Foster has been unable to work and, therefore, unavailable for work, Ms. Foster is not eligible for unemployment insurance benefits. Benefits are denied effective July 27, 2008.

**DECISION:**

The Agency representative's August 28, 2008, reference 01, decision is modified as follows. There has been no separation from the employment. The claims representative's decision that there was a separation is reversed. The claimant not been able and available for full-time work since establishing her claim for benefits. Benefits are denied effective July 27, 2008.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw