

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BREANNE G OLSON

Claimant

APPEAL NO: 14A-UI-05737-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CUSTOM-PAK INC – LP2

Employer

OC: 05/04/14

Claimant: Appellant (4)

Section 96.4-3 – Able and Available

Section 96.5-1 – Voluntary Leaving

Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

Breanne G. Olson (claimant) appealed a representative's May 27, 2014 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits by not being able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 26, 2014. The claimant participated in the hearing. Andrea Lawrence appeared on behalf of Custom-Pak, Inc. – LP2 (employer). Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on May 3, 2011. She worked full time as a machine operator. Her last day of work was September 6, 2013.

The claimant suffered a work-related injury to her foot and ankle in April 2012. She did perform some light-duty work through September 6, 2013. As of January 2014 she was determined to have reached maximum medical improvement (MMI). As of May 31, 2014 she had permanent restrictions of no walking, standing, or working on slippery or uneven surfaces, or in heights. While the doctor's restrictions did not require the claimant to continue to wear a walking boot on her ankle or to continue to use a crutch, the doctor had indicated that she could choose to do so if it made her feel more comfortable.

While the employer does not yet consider the claimant permanently separated from employment, it concedes that in addition to not having work available for the claimant if she wears the boot or uses the crutch, it cannot provide the claimant with work which satisfies the permanent medical restrictions given to her on May 31, 2014. However, it in essence is currently treating the claimant as if she was on a leave of absence. The claimant did not request a leave of absence and had wished to return to the employer if the employer could have satisfied the medical restrictions.

The claimant has been engaged in a search for other employment. Positions for which she has applied which would suit her medical restrictions include telemarketing and reception work. She had been offered a job as an assistant manager in an establishment where that work would be seated at a computer, but that job offer was put on hold by that prospective new employer for other reasons.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Rule 871 IAC 24.22(1). The claimant has demonstrated that she is able to work in some gainful employment.

In general, an employee who is only temporarily separated from her employment due to being on a leave of absence is not "able and available" for work during the period of the leave, as it is treated as a period of voluntary unemployment. Rules 871 IAC 24.22(2); 871 IAC 24.23(10). However, implicit in this conclusion is that the leave is "voluntary" with mutual consent, not a unilateral decision made by the employer. Rules 871 IAC 24.22(2); 871 IAC 24.23(10). Here the claimant did not request a leave of absence, she only sought accommodation. Her involuntary at least temporary period of separation is not due to the type of leave of absence which would render her unable or unavailable for work.

To the extent there has been a de facto separation from employment on at least a temporary basis, but which potentially will be permanent, there are only two provisions in the law which disqualify a claimant who has been separated from unemployment insurance benefits (until she has been reemployed and paid wages for insured work equal to ten times her weekly benefit amount). An individual is subject to such a disqualification if the individual (1) is discharged for work-connected misconduct (Iowa Code § 96.5-2-a) or (2) "has left work voluntarily without good cause attributable to the individual's employer." (Iowa Code § 96.5-1.

Separations are categorized into four separate categories under Iowa law. Rule 871 IAC 24.1(113) defines "separations" as:

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

labor-saving 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.

To the extent there has been a separation, at least temporary, it was neither a quit nor a discharge, but would most closely fall into the "other separations" category, which is not disqualifying.

Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's May 27, 2014 decision (reference 01) is modified in favor of the claimant. The claimant is able to work and available for work effective May 5, 2014. Any separation from employment which has occurred is not disqualifying. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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