

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN M JOHNSON
Claimant

APPEAL NO. 12A-UI-14874-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIOLIFE PLASMA LLC
Employer

OC: 11/18/12
Claimant: Appellant (2)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Shawn Johnson, filed an appeal from a decision dated December 13, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on January 22, 2013. The claimant participated on her own behalf and was represented by Dennis McElwain. The employer, Biolife, participated by Center Manager Matt Ricke and Assistant Center Manager Tom Henry. Exhibits A, B and C were admitted into the record.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Shawn Johnson was employed by Biolife beginning February 2, 2009 as a full-time plasma center technician. She was injured on the job in January 2010 with injuries to left shoulder and arm and lower back.

During her recovery period she worked as a receptionist. In March of 2012 her doctor filled out FML paperwork indicating Ms. Johnson was still under restrictions of no bending, lifting, pulling, pushing, although no weight limit was indicated, and no prolonged standing or sitting. Her job as a technician required her to stand throughout the day because she had to take the vital signs of clients across a counter.

On October 26, 2012, her doctor again imposed the same restrictions, indicating "limited" pulling pushing and lifting again without any specific weight limit as well as no "prolonged" standing or sitting. She was placed on a leave of absence November 19, 2012, because the employer no longer had work for her as a receptionist. She requested accommodations of taking an extra break "now and then" when "really needed." The request further listed being able to turn down certain jobs including heavy lifting or deep bending.

The employer's corporate office rejected the request for accommodation and she remained on leave of absence until being separated on January 4, 2013.

REASONING AND CONCLUSIONS OF LAW:

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".

The claimant has established she was able to do the majority of the duties of a plasma center technician if she could sit to take vital signs from clients, and take a break when needed. The employer's only response to the question of sitting appears to be that the corporate office policy is to have the technician be on the opposite site of a counter to take vital signs without any explanation as to what purpose this service or why it is considered to be so imperative.

The claimant has asked to take breaks "as needed" and to refrain from deep bending or heavy lifting. The administrative law judge does not consider these accommodations to be unreasonable or to place an undue burden on the employer in these circumstances. She was able to perform the duties of a technician but the employer refused to agree to the requested accommodations. The claimant was able and available for work.

DECISION:

The representative's decision of December 13, 2012, reference 01, is reversed. Shawn Johnson is eligible for benefits, provided she is otherwise qualified.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css