

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CRYSTAL A NIMRICK**  
Claimant

**CARLETON LIFE SUPPORT SYSTEMS INC**  
Employer

**APPEAL 17A-UI-06525-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/04/17**  
**Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Able and Available  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.22(2)j – Benefit Eligibility Conditions – Leave of Absence  
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 23, 2017, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 13, 2017. The claimant participated personally and was represented by Christopher D. Spaulding, attorney at law. The employer participated through Steve Walzer, human resources. Carl Vass, safety manager, also testified for the employer. Claimant Exhibit 1 and Employer Exhibit A were received into evidence. (A brief recess was held pre-testimony to allow both parties to receive Exhibits.) The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant on a leave of absence, and is the claimant able and available for work effective June 4, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began full-time employment as a spray painter in 2015 and last performed work on April 11, 2017. The claimant has not separated from employment.

The employer's facility is a factory that paints military equipment, and the claimant's job duties involve spray painting large pieces of equipment. To perform her job duties, the claimant was issued personal protective equipment (PPE) in the form of air mask/respirator suit, that covered the face and has clean, fresh air pumped in for breathing, to counteract the fumes and paint.

The claimant described the equipment as resembling an astronaut suit, in terms of coverage over her body.

On April 11, 2017, the claimant made the employer aware her throat was burning and she was advised to go to the employer doctor. (There is currently a worker's compensation claim in dispute as a result of the claimant's reporting the matter.) In response, in an April 17, 2017 letter to the claimant's treating physician, Dr. Ade, who was a referral from the employer's doctor, stated the claimant appeared to be suffering from "chemical pneumonitis most likely related to an occupational injury at the work site according to the work history provided by the claimant" (Claimant Exhibit 1). Dr. Ade also stated the following restrictions, "She is to stay away from all noxious fumes, vapor and dust" (Claimant Exhibit 1). The claimant handwrote a note after speaking to Dr. Ade's receptionist, "... restrictions for 6 to 8 weeks, possibly forever" (Claimant Exhibit 1).

On June 5, 2017, in a certificate to return to work, Dr. Ade restated restrictions for the claimant: "Patient not to be around chemicals of any kind, dust and paint fumes also. Same as before" (Employer Exhibit A). Safety manager, Carl Vass, asserted that even in an office (like his), it is not possible to avoid all, chemicals, dust and paint fumes at the employer, given that it provides painting at an industrial level. He acknowledged that the levels in some parts of the building may be lower than others, and thus employees don't have to wear PPE when performing job duties, but that compliance with the claimant's restrictions was not feasible. The claimant's restrictions do not provide a quantity or specification of exposure permitted, only that she could not be exposed to any chemicals, fumes or dust. When questioned about the type of work the claimant could perform based on her experience and work restrictions, the claimant indicated office work, such as filing, would be consistent with her experience and work history.

The evidence is also disputed as to the status of the claimant's employment. The employer asserted its position that the injury is not-work related and so it will not accommodate the claimant until her restrictions are lifted, but has not separated her from employment. The employer further asserted the claimant initially applied for FMLA which was ultimately denied, and now the claimant is on an extended, indefinite "sick leave" per the employer's collective bargaining agreement. There appears to be no end date to the restrictions imposed by Dr. Ade. The parties both stated it did not initiate a leave of absence.

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

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work

Iowa Code section 96.4(3) (2017) provides: An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds: The individual is able to work, is available for work, and is earnestly and actively seeking work.... 871 IAC 24.22 expounds on this: 871—24.22 Benefit 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 burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Admin. Code r. 871-24.22; *Davoren v. Iowa Employment Sec. Comm'n*, 277 N.W.2d 602, 603 (Iowa 1979). 24.22(1)

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. *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 723 (Iowa 1993). 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.

The question of work relatedness has no relevance to the question of availability. The limitation of the ability to work is the same for work related or non- work related conditions. Turning to the limitations themselves the administrative law judge concludes that they are not so restricting that the Claimant would not be able to perform any work for which the claimant, given her proven experience, abilities, and training, is reasonably available for. For example, the claimant may not ever be able to work in a paint factory, but credibly testified she could perform work filing papers in an office setting. The administrative law judge therefore concludes that the claimant is able to and available for work, even though she cannot return to her current employment with the existing restrictions.

Cognizant of rule 871 IAC 24.22(2)(j) which states a claimant is not eligible during “[a] leave of absence negotiated with the consent of both parties...”, the administrative law judge is not basing the decision on this rule. The parties dispute whether the claimant was on a leave of absence effective April 11, 2017, or which party initiated the claimant’s work stoppage. However, the claimant has not performed work since April 11, 2017 and there appears no end date to the claimant’s absence from work. For this reason, the issue of whether a separation has occurred is remanded.

**DECISION:**

The June 23, 2017, (reference 01) decision is reversed. The claimant is able to work and available for work effective June 4, 2017. Benefits are allowed, provided she is otherwise eligible.

**REMAND:** The issue of whether the claimant has separated from employment is delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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