IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

SUSAN L CARROLL
Claimant

NEMSCHOFF CHAIRS NIC
Employer

APPEAL NO. 09A-UI-18596-JTT

ADMINISTRATIVE LAW JUDGE DECISION

Original Claim: 11/08/09
Claimant: Appellant (2)

Iowa Code section 96.5(2)(a) – Discharge
Iowa Code section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Susan Carroll filed a timely appeal from the December 3, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing commenced on January 25, 2010 and concluded on February 5, 2010. Ms. Carroll participated. Tim McMahon, Vice President of Human Resources, represented the employer and presented testimony through Gail Anderson, Human Resources Manager, and Brian Schroeder, Plant Manager. Exhibits 1 through 12 and A through Z were received into evidence.

ISSUES:

Whether the claimant separated from the employment for a reason that disqualifies her for unemployment insurance benefits.

Whether the claimant 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: Susan Carroll was employed by Nemschoff Chairs, Inc., as a full-time production worker. Ms. Carroll started the work in July 2007 and last performed work for the employer on April 20, 2009. In October 2008, Ms. Carroll underwent surgery on her right shoulder for a work-related injury. As of February 26, 2009, Ms. Carroll was released to return to "medium duty" duty. Ms. Carroll underwent a functional assessment that indicated she could lift up to 40 pounds using both hands and could lift 15 pounds with her right hand up to waist level. The physical therapist who conducted the functional assessment indicated that Ms. Carroll's right arm above-shoulder lifting should be limited to 10 pounds.

On April 14, 2009, Ms. Carroll fell at work. Ms. Carroll suffered a right arm sprain and a lower back sprain. The lower back sprain aggravated preexisting degenerative disk disease. As of April 20, 2009, Ms. Carroll was off work for a combination of work-related and non-work-related back and arm issues. The employer initially treated the matter as a worker's compensation

matter. The employer's workers' compensation insurance carrier paid temporary workers' compensation benefits for the period of April 20 through July 8, 2009. The workers' compensation carrier had decided as of June 8, 2009 that the workers' compensation claim should be denied. Ms. Carroll continued off work and underwent back surgery on August 5, 2009. The employer approved a medical leave under the Family and Medical Leave Act through September 2, 2009. The employer then approved a non-FMLA medical leave through October 1, 2009. Ms. Carroll had applied for benefits under the employer's short-term disability program. Those benefits expired on October 19, 2009. The employer had approved an extension of the non-FMLA medical leave through November 6, 2009 or until the short-term disability benefits expired, whichever came first.

On October 14, 2009, the employer notified Ms. Carroll that effective October 20, 2009, she was being placed on "inactive status." Ms. Carroll had not yet been released to return to work. By placing Ms. Carroll on "inactive status," the employer effectively discharged Ms. Carroll from the employment. As part of the October 14 letter, the employer notified Ms. Carroll that her medical and dental coverage would end and that she would be offered COBRA. The letter indicated that Ms. Carroll's vacation accrual had stopped on September 2, 2009, when the FMLA leave period was exhausted. The letter indicated that Ms. Carroll had exhausted her available vacation benefit, and that, therefore, there would be no vacation benefit payout. The letter indicated that Ms. Carroll's vision coverage, life insurance, dependent life insurance, and 401K participation would all end on October 20, 2009. Finally, the letter indicated that if Ms. Carroll was released by her doctor to work, she could "submit for open and available positions for which you are qualified."

Ms. Carroll was released to return to work without restrictions November 9, 2009. Under the belief that she had already been discharged from the employment, Ms. Carroll commenced her search for new full-time employment. Ms. Carroll also established a claim for unemployment insurance benefits that was effective November 8, 2009, the Sunday of the week in which she applied for benefits.

On November 18, 2009, the employer sent Ms. Carroll a letter in response to receiving notice that she had filed a claim for unemployment insurance benefits. The employer instructed Ms. Carroll as follows:

> If you have been released to work, please return the enclosed "Written Request for Accommodations" and any physician's release and/or any job specific guidance that has been provide to you by your physician. We will carefully consider your accommodation requests and your interest in an open Nemschoff position in which you are qualified. Please return this requested information no later than December 2, 2009. If requested information is not returned by December 2, 2009, we will assume you are no longer interested in continuing your employment with Nemschoff.

Ms. Carroll did not respond to the employer's letter.

On or about December 1, 2009, Ms. Carroll applied for public assistance. The Iowa Department of Human Services sent an "Employer Statement of Earnings" form for the employer to complete. Ms. Carroll had indicated to DHS that the employer had terminated her employment after she had surgery. On December 2, DHS faxed the form to the employer. On December 8, the employer faxed a response to DHS. The employer asserted that it could not sign the requested document because MS. Carroll had not been terminated but was off work and considered "an inactive employee" for personal reasons since October 20, 2009.

On December 9, 2009, the employer sent a letter to Ms. Carroll. The employer indicated it had received no response from Ms. Carroll to its November 18, 2009 letter. The employer repeated the same directive contained in that letter. The letter concluded with the following:

> "Please return this requested information no later than December 28, 2009. If requested information is not returned by December 28th, 2009, we will assume you are no longer interested in continuing your employment with Nemschoff and consider you a voluntary quit."

On December 21, 2009, Ms. Carroll provided the employer with a copy of the medical release dated November 9, 2009. Though the medical release indicated Ms. Carroll was released to return to work without restrictions, Ms. Carroll filled out the "Written Request for Accommodations" form provided by the employer and listed a number of tasks she was unable and/or unwilling to perform.

On January 6, 2010, the employer sent a letter to Ms. Carroll. The employer said Ms. Carroll's request for accommodations was unreasonable and the employer had no work that fit the request for accommodations. The employer said that Ms. Carroll's employment was being terminated as of January 4, 2010.

REASONING AND CONCLUSIONS OF LAW:

In considering an understanding or belief formed, or a conclusion drawn, by an employer or claimant, the administrative law judge considers what a reasonable person would have concluded under the circumstances. See Aalbers v. Iowa Department of Job Service, 431 N.W.2d 330 (Iowa 1988) and O'Brien v. Employment Appeal Bd., 494 N.W.2d 660 (1993).

A reasonable person in Ms. Carroll's circumstances in October 2009 would have concluded from the employer's letter of October 14, 2009, that the employer was indeed discharging her from the employment. Ms. Carroll had neither notified the employer that she intended to quit the employment nor been released to return to work. The letter contained several indicators that a separation from the employment was taking place. These included a listing of all the employment-based benefits that were coming to an end. The letter essentially indicated that Ms. Carroll could reapply once she had been released by her doctor to return to work. The administrative law judge concludes that Ms. Carroll reasonably concluded, based on the employer's letter of October 14, 2009, that she had been discharged from the employment. As the separation was involuntary and there had been no misconduct, Ms. Carroll was eligible for unemployment insurance benefits, provided she was otherwise eligible. See Iowa Code section 96.5(2)(a) and 871 IAC 24.32(1)(a).

The separation from employment also ended Ms. Carroll's obligation to maintain contact with the employer.

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.

Because there had been a separation from the employment, Ms. Carroll was not obligated to be available for work at Nemschoff Chairs to meet the work availability requirement of Iowa Code section 96.4(3). Ms. Carroll needed only to demonstrate that she was available for some type of work worker's performed in the community. Ms. Carroll did that. Ms. Carroll commenced an active and earnest search for new full-time employment as soon as she established her claim for unemployment insurance benefits and continued that search. The weight of the evidence indicates that Ms. Carroll has met the work availability requirement since she established her claim. In addition, the doctor's release that released her to return to work without restrictions is sufficient evidence, as a matter of law, to demonstrate that she is able to perform work. Again, she need not demonstrate the ability to perform work for Nemschoff Chairs, just the ability to perform some type of work workers perform in the local labor market.

DECISION:

The Agency representative's December 3, 2009, reference 01, decision is reversed. The claimant was discharged on October 20, 2009 for no disqualifying reason. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant. Since the claimant established her claim for benefits, she has met the work ability and availability requirements of Iowa Code section 96.4(3) and is eligible for benefits, provided she is otherwise eligible.

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James E. Timberland
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw