

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA G GOMEZ GUTIERREZ
Claimant

APPEAL NO: 15A-UI-11400-S1

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 09/20/15
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jessica Gomez Gutierrez (claimant) appealed a representative's October 9, 2015, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits. After a hearing notice was mailed to the claimant's last-known address of record, an in-person hearing was held on November 3, 2015. The claimant did participate.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on April 23, 2015, and at the end of her employment she was working as a part-time sales associate. The claimant worked in the showroom but had to go to the warehouse frequently to retrieve items customers purchased. The employer posted No Smoking signs in the warehouse but employees smoked there. The claimant worked in the showroom but went into the warehouse frequently to retrieve items customers purchased.

The claimant regularly met with the employer to discuss how she could improve as a new employee. On April 17, 2015, the claimant had such a meeting. The claimant mentioned her pregnancy and that her doctor ordered her not to be around second hand smoke. The employer did not ask the claimant about the restriction. It read the law, updated the employer's checklist, decided where it needed to put up more signs, and talked to some smokers. The claimant took pictures in the warehouse of the ashtrays with cigarette butts. On September 21, 2015, the claimant sent a picture of a doctor's note by text to the employer. She gave a copy of the note to the employer on September 22, 2015. The note had the restriction, "not to be in area where people smoke". In the five hours she worked on September 22, 2015, the employer did not talk to the claimant about her restrictions, did not tell her she did not have to go to the warehouse, enforce its no smoking policies, or remove the ashtrays from the warehouse. The claimant took

more pictures in the warehouse of ashtrays with cigarette butts. On September 23, 2015, the claimant told the employer she was quitting effective immediately.

On October 27, 2015, the claimant's physician recommended she not be exposed to second hand smoke.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is able and available for work.

Iowa Admin. Code r. 871-24.23(1) provides:

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

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

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was released to work with restrictions by her physician on September 22, 2015. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's October 9, 2015, decision (reference 02) is reversed. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css