IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CARRIE A MORIN
514 E STATE ST
KLEMME IA 50449-9074

DEVELOPMENTAL RESOURCES INC
C/O NORTH CENTRAL HUMAN SVCS INC
102 W PARK ST
FOREST CITY IA 50436-2132

Appeal Number: 06A-UI-06899-JTT
OC: 06/04/06 R: 02
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.4(3) – Able & Available for Work
871 IAC 24.1(113)(d) – Other Separations

STATEMENT OF THE CASE:

Carrie Morin filed a timely appeal from the June 28, 2006, reference 01, decision that denied benefits and concluded that she was voluntarily unemployed pursuant to a leave of absence. After due notice was issued, a hearing was held on July 24, 2006. Ms. Morin participated. Human Resources Coordinator Lisa Nelson represented the employer and presented additional testimony through Area Administrator Mary Beth Russell. Upon written request of the claimant, the administrative law judge took official notice of the Agency administrative file, including documents the parties submitted for the fact-finding interview.

ISSUES:

Whether the claimant is disqualified for benefits based on the employer initiated leave.

Whether the claimant fails to meet the able and available requirements set forth in Iowa Code § 96.4(3) because of the 25-pound lifting restriction imposed in connection with her pregnancy.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 6, 2001, Carrie Morin began her full-time employment as a vocational counselor with Development Resources. The employer provides services to mentally retarded adults. Some of the individuals served by the employer are also physically disabled. As a vocational counselor, Ms. Morin assisted clients with their daily living skills and/or requirements. Though the employer utilizes mechanical hoists to move some clients, the vocational counselors may have to physically assist some clients without using the mechanical hoist. The written job description for the vocational counselor position indicates that individuals in that position may be required to lift up to 40 pounds.

On April 10, 2006, Ms. Morin commenced an approved leave of absence so that she could complete her studies to become a medical assistant. The leave of absence was to expire on May 19, but was extended at Ms. Morin's request to June 5, 2006. At the time the leave was extended, the employer notified Ms. Morin that the employer would have to hire someone to fill Ms. Morin's prior position, but would have a comparable position for her when she returned.

Ms. Morin is pregnant and is expected to deliver her baby on or about August 27, 2006.

On June 1, Ms. Morin contacted her immediate supervisor, Tom Butler, to discuss her return to work on returning to work on June 5. Ms. Morin intended to return to work and the employer expected her to return to work. Ms. Morin told Mr. Butler that her doctor had placed a 25-pound lifting restriction on her in connection with the pregnancy. Mr. Butler told Ms. Morin to return to work on June 5 and the employer would decide at that time what to do in response to the work restrictions.

On June 2, Ms. Morin again contacted Mr. Butler, to ask whether she would be returning to her previous duties. Mr. Butler told Ms. Morin to come to work on June 5 and her specific duties would be decided at that time.

On June 5, Ms. Morin reported for work. Ms. Morin completed paperwork to formally terminate her leave of absence and indicate that she had returned to work. Ms. Morin had not yet provided the employer with a copy of the work restrictions imposed by her doctor, but made arrangements to have her doctor fax the information regarding her 25-pound lifting restriction to the employer on June 5. Though the employer had hired someone to fill Ms. Morin's prior position, the employer put Ms. Morin to work at her previous duties. Ms. Morin worked most her shift.

Later on June 5, the employer received documentation from Ms. Morin's doctor regarding the 25-pound lifting restriction. Area Administrator Mary Beth Russell then summoned Ms. Morin to a meeting. Ms. Russell told Ms. Morin that the employer could not accommodate the lifting restriction and reminded Ms. Morin of the employer's written policy regarding not providing light-duty work outside of situations involving work-related injuries. On May 24, 2005, the employer had notified Ms. Morin and the other employees that it would no longer provide light-duty work for "non-work related injuries." Ms. Morin did not think the policy applied to her because her pregnancy was not an "injury." Ms. Morin had not formally requested light duty

work, but did expect the employer to honor the 25-pound lifting restriction. Ms. Morin believed that her lifting restriction would not limit her ability to perform her prior duties and thought that since she worked as part of a counseling team, others would be available to assist clients if heavier lifting was necessary. Ms. Russell told Ms. Morin that she would be required to immediately commence a leave of absence pursuant to the Family and Medical Leave Act (FMLA) and directed Ms. Morin to contact Human Resources Coordinator Lisa Nelson for the appropriate paperwork and instructions. Ms. Morin made contact with Ms. Nelson and received the leave application materials for leave. Ms. Nelson informed Ms. Morin of the 15-deadline for certifying the medical leave. At that time, Ms. Morin informed Ms. Nelson that her doctor was away for a month and that she would not be able to return the certification materials within the deadline.

Though Ms. Morin has not submitted the FMLA application materials to the employer, the employer continues to deem Ms. Morin an employee and expects to re-employ her in a comparable position once she is granted a full release. On Friday, July 29, Ms. Morin will graduate and receive her medical assistant certification. Both parties indicate an intention for Ms. Morin to recommence her employment. The employer conditions Ms. Morin's return on a full medical release, which Ms. Morin will not be able to provide until after she delivers her baby. Ms. Morin would return to the work now with the lifting restriction if allowed, but intends to take six to eight weeks away from work following the birth of her baby. Since the employer sent Ms. Morin home on June 5, Ms. Morin has sought other employment consistent with her lifting restriction.

REASONING AND CONCLUSIONS OF LAW:

The questions for the administrative law judge are whether Ms. Morin is disqualified for benefits based on the employer initiated leave of absence and whether Ms. Morin is able and available for work.

Iowa Code § 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 provides:

> 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.

871 IAC 24.22(2) provides:

> 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.
>
> (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.

In Wills v. EAB, 447 N.W.2d 137 (Iowa 1989), the Supreme Court considered the case of a pregnant CNA who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits after the employer did not let her return to work because of its policy of never providing light-duty work. Reversing the agency, the Supreme Court ruled that Wills became unemployed involuntarily.

Based on the decision in Wills, the administrative law judge concludes that Ms. Morin's involuntary separation from the employment was due to her failure to meet the employer's physical standards for employment, rather than a leave of absence negotiated by the parties. See 871 IAC 24.1(113). The administrative law judge further concludes that Ms. Morin's 25-pound lifting restriction does not prevent her from being able to work and that Ms. Morin meets the requirements set fort that Iowa Code § 96.4(3). Ms. Morin is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The Agency representative's June 28, 2006, reference 01, decision is reversed. The claimant's separation from the employment was an involuntary separation initiated by the employer. The claimant is able to work. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

jt/pjs