

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

JULIE A MEIRICK  
2675 – 230<sup>TH</sup> ST  
CLARION IA 50525

ELECTROLUX HOME PRODUCTS INC  
D/B/A FRIGIDAIRE  
C/o TALX EMPLOYER SERVICES  
PO BOX 1160  
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-04326-RT  
OC: 03/05/06 R: 01  
Claimant: Appellant (1)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Required Findings (Able and Available for Work)  
Section 96.7-2-a-2 – Employer Contributions and Reimbursements (Same Employment – Benefits Not Charged)

STATEMENT OF THE CASE:

The claimant, Julie A. Meirick, filed a timely appeal from an unemployment insurance decision dated April 14, 2006, reference 03, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 8, 2006, with the claimant participating. Yvonne Witte, Union Steward for United Autoworkers Union Local 442, represented the claimant. Mallory Russell, Human Resources, participated in the hearing for the employer, Electrolux Home Products, Inc., doing business as Frigidaire. Claimant's Exhibit A was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. This

appeal was consolidated with appeal number 06A-UI-04327-RT for the purposes of the hearing with the consent of the parties.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was, and still is, employed by the employer since February 22, 2005, as a full-time machine operator. However, the claimant is presently on a medical leave and has not worked for the employer since February 24, 2006. The claimant is presently receiving short-term disability in the amount of \$225.00 per week for 26 weeks pursuant to the employer's sickness and accident policy. The claimant is off work because of pain in her neck and back and numbness in her arms which is unrelated to her employment. This was a preexisting condition before the claimant's employment. The claimant's neurologist performed an MRI. The claimant was not permitted to work at all for one week and then was released to work with substantial restrictions which will not be released until May 26, 2006. The restrictions on the claimant are no lifting or pushing or pulling of ten pounds or more, no repetitive motion, and no lifting of her arms over her head. The employer is not able to meet those restrictions. Because the employer cannot meet the restrictions, the employer cannot allow the claimant to work. The claimant's job requires lifting and pushing and pulling and further requires repetitive motion and further requires that the claimant lift her arms over her head. The employer also has no other position that would meet the claimant's restrictions. The employer does provide some light duty assignments for those injured as a result of work-related injury pursuant to workers' compensation but even those positions would require lifting. The employer's actions in preventing the claimant from working because she has medical restrictions caused by injuries unrelated to her employment which restrictions the employer cannot meet, are in keeping with the collective bargaining contract as shown at Claimant's Exhibit A. At all material times hereto, the claimant knew what her job was and what the position required. The claimant was provided a job description when she was first hired.

The claimant has placed no time or day or location restrictions on her availability for work and she is not now earnestly and actively seeking work. If the claimant had no medical restrictions on her ability to work she could return to her old job at the same pay and the claimant could also bid on other jobs.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the claimant is ineligible to receive unemployment insurance benefits because, at relevant times, she is and was, not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits for those reasons.
2. Whether the claimant is receiving the same employment or has the opportunity to receive the same employment, including the same hours and wages, as she did during her base period and therefore any unemployment insurance benefits to which the claimant is entitled shall not be charged to the account of the employer herein. The claimant is receiving, or has the opportunity to receive, the same employment that she received during her base period and, therefore, the employer should not be charged for any unemployment insurance benefits to which the claimant may become entitled.

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 administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code section 96.4(3) or is otherwise excused. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence either that she is able, available, and earnestly and actively seeking work or that she is excused from those requirements. There is not a preponderance of the evidence that the claimant is either temporarily unemployed or partially unemployed as defined by Iowa Code section 96.19(38)(b) and (c), so as to be excused from the requirements that she be available for work and earnestly and actively seeking work. There is also no evidence that the claimant is approved for, and is attending, department approved training pursuant to Iowa Code section 96.4(6) which would also excuse the claimant from the requirements that she be available for work and earnestly and actively seeking work. Even if the claimant was excused from the requirements that she be available for work and earnestly and actively work the claimant must still be able to work.

The administrative law judge concludes that the claimant has not demonstrated by a preponderance of the evidence that she is able to work. The evidence is uncontested that the claimant has substantial restrictions on her ability to work as set out in the Findings of Fact, which restrictions are as a result of injuries or other conditions unrelated to her employment. These conditions were preexisting when the claimant first went to work for the employer. The evidence is also uncontested that the claimant's position as a machine operator cannot meet those restrictions. The employer's witness, Mallory Russell, Human Resources, credibly testified that the employer has no other positions that would meet the claimant's restrictions. Ms. Russell testified that for some job-related injuries causing restrictions the employer has light duty positions but those are only for employees having work-related injuries and under workers' compensation which is pursuant to the collective bargaining contract at Claimant's Exhibit A. Further, Ms. Russell credibly testified that even those light duty positions require lifting. Accordingly, the administrative law judge concludes that the claimant is not able to work.

The administrative law judge further concludes that the claimant is not available to work even though she has placed no restrictions on the time or day or locations where she could work because she is not able to work and has restrictions from a physician and is on a leave of absence receiving short-term disability. See 871 IAC 24.23(1), (6), and (10). The administrative law judge reiterates that the claimant is receiving \$225.00 per week in short-term disability, which supports the conclusion that the claimant is not able and available for work. The administrative law judge also concludes that the claimant is not earnestly and actively

seeking work. Accordingly, the administrative law judge concludes that the claimant is not able, available, and earnestly and actively seeking work and she is not excused from those requirements and, therefore, the claimant is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until, or unless, she demonstrates that she is able, available, and earnestly and actively seeking work and is otherwise entitled to such benefits..

Iowa Code section 96.7-2-a(2) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

The administrative law judge concludes that the claimant is receiving, or has an opportunity to receive, the same employment including the same hours and wages from the employer as she did during her base period. Accordingly, the administrative law judge concludes that any unemployment insurance benefits to which the claimant may become entitled should not be charged to the account of employer herein. It is true that the claimant has medical restrictions which the employer cannot meet but those restrictions are due to a non-work-related injury and the administrative law judge concludes that that does not change the result here. The evidence establishes that without those medical restrictions the claimant could return to her old job at the same pay or even bid on other jobs. Accordingly, the administrative law judge concludes that the claimant is receiving the same employment from the employer as she did during her base

period and, as a consequence, the employer should not be charged for any unemployment insurance benefits to which the claimant may become entitled.

DECISION:

The representative's decision of April 14, 2006, reference 03, is affirmed. The claimant, Julie A. Meirick, is not entitled to receive unemployment insurance benefits, until, or unless, she demonstrates that she is able, available, and earnestly and actively seeking work because she is not now able, available, and earnestly and actively seeking work. Any unemployment insurance benefits to which the claimant may become entitled should not be charged to the account of the employer herein because the claimant has the opportunity to receive the same employment including hours and wages now as she did during her base period but for medical restrictions due to a non-work-related illness or injury.

cs/pjs