

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EMILY M SMITH
Claimant

CUSTOM-PAK INC – LP2
Employer

APPEAL 16A-UI-13525-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/27/16
Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the December 16, 2016 (reference 01) unemployment insurance decision that found claimant was ineligible for unemployment benefits because she was not able to perform work. The parties were properly notified of the hearing. A telephone hearing was held on January 12, 2017. The claimant, Emily M. Smith, participated personally. The employer, Custom-Pak Inc. – LP2, participated through witness Andrea Lawrence. Claimant's Exhibit A was admitted into evidence. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits record including the fact finding documents.

ISSUE:

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time for this employer from August 30, 2016 until November 28, 2016 when she separated from employment. Claimant was working full-time for this employer as a machine operator. Her job duties required prolonged standing.

Beginning November 6, 2016 claimant began suffering from a non-work related illness. This illness made her dizzy when she stood for long periods of time, usually after an hour or two of standing. She visited with her doctor who told her she needed to stop working. She did not work from November 6, 2016 through November 28, 2016. On November 28, 2016 she gave the employer her release to work with restrictions that she received from her medical provider on November 23, 2016. See Exhibit A. She was told at that time there were no jobs available which fit within her restrictions of no prolonged standing.

Claimant has worked as a food server, bartender, cook, newspaper delivery person, and front desk clerk of a hotel during her work history. Her job as a front desk clerk also required her to clean, set up breakfast, and attend to guests. Each of these positions required long periods of standing or working.

There has not been an initial investigation and determination with regard to the claimant's separation from employment by the Benefits Bureau of Iowa Workforce Development. This matter shall be remanded to the Benefits Bureau for an initial investigation and determination regarding claimant's separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able to and available for work effective November 27, 2016.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment

benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

The medical condition claimant continues to suffer from is not work-related. She has been released back to work but with restrictions of no prolonged standing. Since claimant is unable to perform her work duties due to a non-work related illness and the employer is not obligated to accommodate a non-work related injury or illness, she has not established her ability to or availability for work. Further, there are no jobs in claimant's work history which she would be able to perform without prolonged periods of standing. Benefits are denied.

DECISION:

The December 16, 2016 (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work effective November 27, 2016. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given her education, training and work experience, and any medical restrictions. At that point, there must be an evaluation of whether employment, with reasonable accommodation if appropriate, is available.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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