

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JILL R KROEGER
Claimant

GENESIS HEALTH SYSTEM
Employer

APPEAL 17A-UI-08442-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/23/17
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Leave of Absence

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 10, 2017 (reference 02) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was not available for work due to a leave of absence. The parties were properly notified of the hearing. A telephone hearing was held on September 6, 2017. The claimant, Jill R. Kroeger, participated personally and through witness Lyn Applebee. The employer, Genesis Health System, did not participate. Claimant's Exhibit A was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant able to work and available for work effective July 23, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant sustained an injury which required surgery. Claimant was on leave under the Family and Medical Leave Act ("FMLA") from June 2, 2017 until July 24, 2017. Claimant has since recovered from this injury and has been able to and available for work without restrictions since July 24, 2017. Claimant has been actively and earnestly seeking work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective July 23, 2017.

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".

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)).

Because the treating physician has released the claimant to return to work without restrictions, she has established her ability to work. Claimant is available for work and earnestly and actively seeking work. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The August 10, 2017 (reference 02) unemployment insurance decision is reversed. The claimant is able to and available for work effective July 23, 2017. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs