

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

YOLANDA D JACKSON
Claimant

APPEAL 15A-UI-05716-DGT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 04/26/15
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) – Availability Disqualifications

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 12, 2015, (reference 01) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on June 25, 2015. Claimant participated personally. Employer participated by Steven Zaks, Hearing Representative. Employer's Exhibits 1 through 16 and Claimant's Exhibit A were admitted into evidence.

ISSUE:

The issue in this matter is whether 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: Claimant was placed on a voluntary medical leave on or about November 26, 2014. She attended mental health therapy, and provided adequate notice to employer about her condition and availability for work.

Claimant's medical leave expired on or about March 30, 2015. She was placed on an extended voluntary unpaid leave of absence at that time. Claimant has continued with her treatment, but has not been released to work without restrictions as of this date. Employer does have continued work available once claimant has been released back to work. Claimant's medical condition was not solely caused by an event that occurred at work, and is not considered a work-related injury in this proceeding.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 26, 2015.

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".

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.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The Court found no separation from employment and allowed partial benefits where claimant's work aggravated chronic lung disease prevented him from full-duty work but he reported daily for assignments as available. *FDL Foods v. Emp't Appeal Bd. and Lambers*, 460 N.W.2d 885 (Iowa Ct. App. 1990).

The Supreme Court ruled that a claimant with a non-work related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

Inasmuch as the medical condition is not work related and the treating physician has not released the claimant to return to work without restriction, she has not established her ability to work while still an employee of Wells Fargo, NA until release back to work without any restrictions. While she may be able to perform other work duties, the employer is not obligated to accommodate a non-work related medical condition, and since she has not been released to perform her full work duties, she is not considered able to or available for work at this time.

The employer is not obligated to accommodate a non-work related medical condition. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The representative's decision dated May 12, 2015, (reference 01) is affirmed. The claimant is not able to work and available for work effective April 26, 2015. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs