

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY S ZICKAU
Claimant

APPEAL 17A-UI-09910-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AREA SUBSTANCE ABUSE COUNCIL INC
Employer

**OC: 08/27/17
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 18, 2017, (reference 01) unemployment insurance decision that denied benefits based on her inability to work due to illness. The parties were properly notified of the hearing. A telephone hearing was held on October 26, 2017. The claimant participated and testified. The employer participated through Executive Director Barb Gay. Claimant's Exhibits A through C and employer's Exhibits 1 through 3 were received into evidence.

ISSUE:

Is the claimant able to work and available for work effective August 27, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a secretary/receptionist. On July 10, 2017, claimant went on a medical leave of absence for issues related to depression and anxiety. (Exhibit 1). Claimant testified, for the last two years she had been experiencing severe physical symptoms of a mold allergy, which she believes were triggered by her work environment. These symptoms led her to become depressed. On August 16, 2017, claimant's treating medical professional, Registered Nurse Practitioner Dorothy Anderson, released her to return to work effective August 8, 2017, with the condition that mold in the workplace be abated prior to her return. (Exhibit A). The release did not define what the air quality levels should be, nor did it specify what levels would be safe for claimant to return. Upon receiving claimant's release, the employer contacted the City of Clinton to conduct air quality testing. The testing levels came back with mold levels in the normal range and the work space was deemed safe to work in. The employer nevertheless agreed to take some remedial steps to address moisture and potential future mold issues within the workplace and offered to allow claimant to temporarily work at another site in the meantime. Claimant did not accept this accommodation, as she would not be able to perform the functions of her job that allowed her to interact directly with patients and

visitors, and would require her to work at a location primarily by herself. Claimant opted instead not to return to work.

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.

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".

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 medical practitioner and has not been released as being able to work.

Claimant was released to return to work on August 16, 2017, under the condition that the mold in her workspace be abated. Iowa Code § 216.6 requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires

and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

The doctor's release does not contain sufficient information to indicate what would be acceptable levels for claimant to return to work. The employer had its air quality tested and testing showed it was safe. Though testing came back in the normal range, the employer determined to take steps to remediate the mold levels in the air and offered claimant the accommodation of working in another building while the issue was being addressed. Claimant declined this offer and chose not to return to work. While the accommodation offered may not have been claimant's preferred accommodation, it was reasonable for the purposes of this hearing and determination. In as much as the claimant has been released to return to work, has been offered a reasonable accommodation, but has failed to actually report to work, she is not considered able to or available for work. Benefits are withheld.

DECISION:

The representative's decision dated September 18, 2017 (reference 01) is affirmed. The claimant is not able to work and available for work effective August 27, 2017. Benefits are withheld until such time as the claimant obtains a medical release and is willing to return to work.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs