

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

THERESA L ANDERSON
Claimant

APPEAL NO. 07A-UI-11033-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SSA SECURITY INC
Employer

OC: 10/21/07 R: 03
Claimant: Appellant (2)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Theresa Anderson filed a timely appeal from the November 27, 2007, reference 01, decision that denied benefits effective October 21, 2007. After due notice was issued, a hearing was held on December 13, 2007. Ms. Anderson participated. Brenda Shepard, Security Director, represented the employer.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant requested and received an approved leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Theresa Anderson commenced her full-time employment with Silverhawk Security on April 4, 2006 and worked as a Security Guard/Service Attendant at the Excel meatpacking plant in Ottumwa. Ms. Anderson was responsible for ensuring security and stocking supplies in one off the facility's large restrooms. In the early hours of August 28, 2007, Ms. Anderson was stocking the women's restroom at the Excel facility when she slipped on a wet floor and injured her left knee. Ms. Anderson continued to perform her duties. By August 30, 2007, Ms. Anderson's knee had become swollen. On that day, Ms. Anderson notified Security Director Brenda Shepard that she had been injured on August 28, that she had not appreciated at the time the extent to which she was injured, and that she needed to have someone look at her knee. Ms. Shepard told Ms. Anderson that she was not certain what she would be able to do for Ms. Anderson in light of the two-day lapse between the incident and the report. Ms. Shepard directed Ms. Anderson to visit the nursing department at the Excel facility. Ms. Anderson met with a nurse practitioner at the Excel facility on August 28. Ms. Anderson and Ms. Shepard completed an injury report, which Ms. Anderson forwarded to the appropriate person at Silverhawk Security.

On September 8 or 9, Ms. Anderson told Ms. Shepard that she would like to have a doctor examine her knee. Ms. Shepard provided Ms. Anderson with contact information for the

employer's workers' compensation health care provider, Concentra. Ms. Anderson made an appointment for September 10. The Concentra doctor diagnosed a stretched ligament in Ms. Anderson's left leg. The doctor prescribed muscle relaxing medication. The doctor directed Ms. Anderson to ice her knee, to wear a knee brace, and to rest her knee every 30 minutes. The doctor referred Ms. Anderson for physical therapy and returned her to her regular duties effective September 14. Ms. Anderson promptly provided Ms. Shepard with the note from the doctor.

On September 21, Ms. Anderson had a follow up appointment with the Concentra doctor. The Concentra doctor referred Ms. Anderson for physical therapy. The Concentra doctor imposed work restrictions. The Concentra doctor indicated that Ms. Anderson was not to stand for prolonged periods, was not to walk more than 30 minutes, was not to squat or kneel, was not to climb stairs or ladders, was to wear a splint, and was to limit use of her left leg. Ms. Anderson promptly provided the doctor's note to Ms. Shepard. Ms. Shepard concluded that Ms. Anderson could continue to perform her regular duties. Ms. Shepard directed Ms. Anderson to utilize chairs that were available in the restroom as needed and as her duties allowed.

On September 28, Ms. Anderson complained of back pain while participating in a physical therapy session.

By the end of September, Ms. Anderson had made multiple trips from Ottumwa to Des Moines for appointments at Concentra. Ms. Anderson asked Ms. Shepard whether it was possible to have subsequent medical appointments scheduled with a doctor in Ottumwa. Ms. Shepard directed Ms. Anderson to contact Concentra to see whether they had an affiliated doctor in Ottumwa. Thereafter, Ms. Anderson received services from a doctor in Ottumwa. The Ottumwa doctor ordered Magnetic Resonance Imaging (MRI). On October 24, the Ottumwa doctor diagnosed torn cartilage in Ms. Anderson's left knee. The doctor told Ms. Anderson that the physical therapy would be discontinued because it could cause further injury. The doctor told Ms. Anderson that she would need surgery. The doctor told Ms. Anderson that the doctor had provided the employer's workers' compensation carrier with the name of a surgeon who could perform the surgery. The doctor restricted Ms. Anderson to sedentary work.

Ms. Anderson telephoned Ms. Shepard after her October 24 doctor appointment. Ms. Anderson told Ms. Shepard that the doctor had limited her to sedentary work. Ms. Shepard told Ms. Anderson that the employer had no sit down work for her. Ms. Shepard told Ms. Anderson that she would take Ms. Anderson off the schedule for the following week. Ms. Shepard told Ms. Anderson that Ms. Shepard would need to speak with her supervisor regarding whether the employer had any work for Ms. Anderson. Ms. Anderson desired to keep working.

Ms. Anderson again contacted Ms. Shepard on October 26. Ms. Shepard told Ms. Anderson that she would remain off the schedule until she was able to return to her regular duties. At no time did Ms. Anderson request a leave of absence.

Later, on October 26, Ms. Anderson contacted the employer's workers' compensation carrier to inquire further regarding the surgery recommended by the Ottumwa doctor. The workers' compensation carrier notified Ms. Anderson that her workers' compensation claim had been denied due to a lack of proof that the restroom floor had been wet during the early morning hours of August 28 and a conclusion that the injury had occurred outside of work. The carrier told Ms. Anderson that she would have to prove that the floor was wet. Up to this point, Ms. Shepard was not aware of anything that suggested Ms. Anderson had been less than forthcoming in connection with the report of injury.

Ms. Anderson established a claim for unemployment insurance benefits that was effective October 21, 2007. Ms. Anderson had no other restriction than that she perform sedentary work. Ms. Anderson is still job-attached. Because of this, a Workforce Development representative advised Ms. Anderson that she was not required at present to seek other employment. There had been no change in the condition of Ms. Anderson's knee. Ms. Anderson has continued to maintain appropriate contact with the employer.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 24.22(1)a, (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

A claimant is unavailable for work and disqualified for benefits if the claimant requested and was granted a leave of absence. The leave period is deemed a period of voluntary unemployment and shall be considered ineligible for benefits for such period. See 871 IAC 24.23(10).

This greater weight of the evidence in the record establishes that Ms. Anderson suffered a workplace injury on August 28, 2007. The evidence indicates that Ms. Anderson never requested a leave of absence. The evidence indicates that Ms. Anderson provided the employer with appropriate notice of the restrictions imposed by the physicians selected by the employer's workers' compensation carrier. The evidence indicates that the employer placed Ms. Anderson on a forced leave of absence on October 24, 2007, rather than provide work that complied with the medical restriction. The evidence indicates that Ms. Anderson continued to be able to perform work, so long as the work was sedentary in nature. The evidence indicates that the employer could have made reasonable accommodations that would have allowed Ms. Anderson to continue working. Such accommodations would not have imposed unreasonable hardship on the employer. The employer made no attempt to accommodate the work restriction imposed on October 24, 2007. The employer had a duty to make reasonable accommodations that would allow Ms. Anderson to continue working. See Sierra v. Employment Appeal Board, 508 N.W.2d 719, 722-724 (Iowa 1993).

The evidence indicates that the employer imposed a temporary layoff that was effective October 24, 2007. Ms. Anderson continues to be job-attached, but temporarily unemployed. See 871 IAC 24.1(113)(a) and Iowa Code section 96.19(38)(c). Ms. Anderson is eligible for benefits effective October 21, 2007, provided she is otherwise eligible. The employer's account may be charged for benefits paid to the claimant.

DECISION:

The Agency representative's November 27, 2007, reference 01, decision is reversed. The claimant did not request a leave of absence. The claimant was placed on a forced leave of absence. The claimant is job-attached, but temporarily laid off. The claimant is eligible for benefits, provided she is otherwise eligible. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs