

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

BARBARA S VANWYK  
841 AUGUSTA CR  
NORTH LIBERTY IA 52317-9419

MIDAMERICAN ENERGY COMPANY  
ATTN SHELLY R TURNER  
PO BOX 657  
DES MOINES IA 50303

Appeal Number: 06A-UI-01795-LT  
OC: 01-22-06 R: 03  
Claimant: Respondent (2)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code §96.4(3) - Able and Available

STATEMENT OF THE CASE:

Employer filed a timely appeal from the February 9, 2006, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on March 2, 2006. Claimant did participate. Employer did participate through Shelly Turner and Steve Sullivan, labor relations coordinators; Kathi Ellison, manager, and Donna Ashmore, supervisor. The administrative law judge took judicial notice of the administrative record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a full-time customer office representative/cashier. She became unable to work at her regular job duties effective November 23, 2005 and was assigned permanent restrictions on her right arm because of a work-related repetitive motion injury. There have been no further

medical restrictions added, removed or clarified in relation to the essential functions of her job. The main obstacle is that the drive-up window is too tall for her but she refused the use of two sizes of a stool with steps.

On December 1, 2005 and January 18, 2006, claimant met with Steve Sullivan but had no further updates to her medical restrictions and refused the various attempts to reasonably accommodate claimant so she would be able to perform the essential functions of her position. As a result, Kathi Ellison, manager since December 16, 2005, met with claimant on January 23 and gave her a medical disqualification letter because she is not available to perform the essential functions of her job.

Claimant is seeking office work, grocery store accounting, and has searched the company job line. She has filed a second workers' compensation claim for her left arm but has not seen a physician for a diagnosis. She is receiving 100 percent of her pay for short term disability.

#### 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".

871 IAC 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.

871 IAC 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.

Although the injury was work-related, claimant has not been willing to accept reasonable accommodation from employer's multiple offers, and the treating physician has not further modified the restrictions or released the claimant to return to work without restriction, the claimant has not established her ability to work. Thus, since claimant refused the available accommodated work there was no layoff or lack of work. Finally, as long as claimant qualifies for 100 percent short-term disability payments, she is not considered able to work because a total temporary disability (whether private coverage or workers' compensation benefits) implies on its face the claimant is not able to work. Benefits are denied as of January 22, 2006.

DECISION:

The representative's decision dated February 9, 2006, reference 02, is reversed. The claimant is not able to work and available for work effective January 22, 2006. Benefits are withheld until such time as the claimant presents further clarification on her medical restrictions and vocational ability since she is not willing to accept employer's reasonable accommodation on her current restrictions or is released to return to work without restrictions within her education, training and work history. Inasmuch as no benefits were paid, no overpayment applies.

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