

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

SHARON L SHORTER
410 W 15TH ST
DAVENPORT IA 52803

COMBINED CANDY & SNACKS LLC
SHAKESPEARE'S
3840 W RIVER DR
DAVENPORT IA 52802

Appeal Number: 06A-UI-06346-DWT
OC: 04/23/06 R: 04
Claimant: Appellant (2/R)

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Sharon L. Shorter (claimant) appealed a representative's June 13, 2006 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits as of May 18, 2006, because she refused to return to work after a temporary layoff with Shakespeare's (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 11, 2006. The claimant participated in the hearing. Mary Bisinger, the administrative assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the claimant able to and available to return to work when the employer called her back to work?

Should the claimant be disqualified from receiving benefits for declining to return to work after a short-term layoff?

FINDINGS OF FACT:

The claimant started working for the employer on August 1, 2005. The claimant worked full time in packing or production. On April 28, 2006, the employer laid off employees, including the claimant, for four to eight weeks.

Although the employer called back some employees on May 18, the employer did not contact the claimant until May 23, 2006. The employer asked the claimant to return to work on May 25. At that time, the claimant was in pain and her doctor restricted her from doing any work from May 25 through June 8. On June 9, the claimant presented the employer with her doctor's restrictions. The claimant's doctor extended the claimant's work restriction through July 7, 2006. On June 9, the claimant informed the employer she would not be returning to work.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if she refuses an offer of suitable work without good cause. Iowa Code § 96.5-3-a. Before a disqualification for failing to accept work can be imposed, a claimant must be able to and available for work. When a claimant is not able to work, she will not be disqualified for refusing an offer of suitable work but will not be eligible to receive benefits based her availability to work. 871 IAC 24.24(4).

The evidence indicates that when the employer asked the claimant to return to work on May 25, 2006, her physician had restricted her from working. While the work restriction was initially May 25 to June 7, the claimant's physician extended the restriction to July 7, 2006. Therefore, the claimant is not disqualified from receiving benefits for failing to return to work on May 25, 2006. The facts indicate the claimant was able to and available for work from April 23 through May 27, 2006.

The evidence also revealed that on June 9 the claimant informed the employer she would not be returning to work. The claimant has not filed any weekly claims after May 27, 2006. It appears there is a potential separation issue. This issue is remanded to the Claims Section to determine if an investigation is needed, since the claimant has not filed any benefits after May 27, 2006.

DECISION:

The representative's June 13, 2006 decision (reference 04) is reversed. The employer contacted the claimant on May 23 to return to work on May 25. From May 25 through July 7, the claimant's physician restricted her from working. As a result of this work restriction, the claimant declined to return to work on May 25, 2006. As of May 28, 2006, the claimant is not eligible to receive benefits, because she was not able to or available to work. From April 23 through May 27, 2006, the claimant is eligible to receive unemployment insurance benefits. A separation issue that occurred on June 9, 2006, is remanded to the Claims Section to decide if an investigation on this issue is needed, since the claimant has not filed any claims after May 27, 2006.

dlw/kjw