

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOMINIQUE M KLOTZ
Claimant

BERTCH CABINET MFG INC
Employer

APPEAL 21A-UI-02194-AD-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/22/19
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

On December 28, 2020, Dominique Klotz (claimant/appellant) filed an appeal from the December 16, 2020 (reference 02) unemployment insurance decision that denied benefits as of October 18, 2020 based on a finding claimant was not able to perform work due to illness.

A telephone hearing was held on February 22, 2021. The parties were properly notified of the hearing. Bertch Cabinet Mfg. Inc. (employer/respondent) participated by HR Director Mitzi Tann. Benefits Coordinator Mark Melcher participated as a witness for employer. Claimant participated personally.

Employer's Exhibits 1-7 were admitted. Official notice was taken of the administrative record.

ISSUE(S):

- I. Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was July 28, 2014. Claimant worked for employer as a full-time component processor/shipping and receiving apprentice. She most recently worked on the optimizer in the rough mill. Claimant's immediate supervisor was John Henson. The last day claimant worked on the job was October 8, 2020. Claimant resigned on October 22, 2020.

Claimant resigned because her doctor had restricted her from working in an environment with saw dust. This was due to claimant having breathing/asthma issues as a result of the work environment. Claimant reported her restriction to employer on or about October 8, 2020, and provided supporting medical documentation. Employer could not reasonably accommodate claimant's restriction, as it had no open positions where claimant would not be exposed to saw dust.

Since her separation from employment, claimant has since been searching for work in an office or customer service setting where she would not be exposed to conditions which may exacerbate her breathing issues. Claimant has prior experience in work of that nature.

Claimant has filed a claim for benefits each week from the benefit week ending October 24, 2020 and continuing to present.

REASONING AND CONCLUSIONS OF LAW:

For the reasons set forth below, the December 16, 2020 (reference 02) unemployment insurance decision that denied benefits as of October 18, 2020 based on a finding claimant was not able to perform work due to illness is MODIFIED in favor of claimant. Claimant was not able and available for work in the week ending October 24, 2020. However, she is able to and available for work from the benefit week ending October 31, 2020 and continuing.

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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into

consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Empl't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant was not able to work during the majority of the benefit week ending October 24, 2020. This is because she was not able to perform the essential duties of the job with or without a reasonable accommodation. Employer could not reasonably accommodate claimant's restriction, as it had no open positions where claimant would not be exposed to saw dust.

However, once claimant separated from employment on October 22, 2020, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since her separation from employment, claimant has since been searching for work in an office or customer service setting where she would not be exposed to conditions which may exacerbate her breathing issues. Claimant has prior experience in work of that nature. Thus the claimant is considered as able to work from the benefit week ending October 31, 2020.

DECISION:

The December 16, 2020 (reference 02) unemployment insurance decision that denied benefits as of October 18, 2020 based on a finding claimant was not able to perform work due to illness is MODIFIED in favor of claimant. Claimant was not able and available for work in the week ending October 24, 2020. However, she is able to and available for work from the benefit week ending October 31, 2020 and continuing.

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.



Andrew B. Duffelmeyer
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March 4, 2021
Decision Dated and Mailed

abd/scn