

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CASEY C RODRIGUEZ
Claimant

EYM KING OF IOWA LLC
Employer

APPEAL 17A-UI-11458-DG-T

**AMENDED
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/15/17
Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 7, 2017, (reference 01) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on November 29, 2017. Claimant participated personally. Employer participated by Rose Hicks, District Manager.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant sought out medical treatment for an illness that was not work-related on October 2, 2017. Her physician was concerned that she may be suffering from breast cancer, and ordered immediate further testing.

Employer received information from claimant that she needed time off for medical treatment. Claimant was told that she would be given time off to attend treatment. The store manager was told by claimant's boyfriend that she was sick, and that she may need an extended leave of absence because of the seriousness of her malady.

Claimant did undergo testing, and the test results showed that she did not have cancer. Claimant contacted the employer on October 12, 2017 and told her manager that she had been released to return to work on that date. Employer told claimant he would check the schedule, and see if there was any work available to her.

Claimant did not hear back from employer and she filed for benefits during the week of October 15, 2017. Claimant is currently seeking employment, and she is available to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective October 15, 2017.

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.

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. Emp't Appeal Bd.*, 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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Inasmuch as the illness was not work-related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. Benefits shall be allowed effective October 15, 2017.

DECISION:

The decision of the representative dated November 7, 2017, (reference 01) is reversed. Claimant is eligible to receive unemployment insurance benefits, effective October 15, 2017, provided claimant meets all other eligibility requirements.

REMAND: The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn