

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEAN M LEY**  
Claimant

**APPEAL NO: 11A-UI-04801-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HY-VEE INC**  
Employer

**OC: 02/06/11**  
**Claimant: Respondent (1)**

Iowa Code § 96.5(1)d – No Job After Offer to Return to Work after Recover from an Injury

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's April 1, 2011 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because after the claimant recovered from an illness and offered to return to work, the employer did not have work for her to do. The claimant participated in the hearing with her son, Donald. Alice Rose Thatch, a representative with Corporate Cost Control, Inc., represented the employer. Krista Kalb, the human resource manager, and Abby Olson, appeared on the employer's behalf. During the hearing, Employer's Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits.

**ISSUE:**

As of February 6, 2011, is the claimant qualified to receive benefits?

**FINDINGS OF FACT:**

The claimant started working for the employer in July 1995. She worked as a part-time courtesy clerk. After the claimant punched out on September 2, 2010, and was walking in the parking lot, she fell, injured her hip and was hospitalized. The claimant's treating physician treated her broken hip and restricted the claimant from working as of September 3. The employer approved a medical leave of absence for the claimant until December 2, 2010. Even though the claimant had not been released to work as of December 2, the employer had her job waiting for her when she was released to work.

On December 20, the claimant gave the employer a work release from her physician indicating she was unable to work June 30, 2010 through January 3, 2011. (Employer Exhibit One.) Based on this work release, the claimant asked the employer to schedule her to work as of January 4, 2011.

Since the work release did not specifically state whether the claimant had any work restrictions or not, the employer told the claimant she had a job but first needed to have her doctor indicate if she had any work restriction as of January 3, 2011.

Dr. Cairns, the claimant's treating physician, ended his practice and assigned his patients to other doctors. Based on the employer's instructions, the claimant talked to Dr. Cairns' nurse about the additional information the employer wanted. The claimant understood that the work release she received was all she needed. His nurse told the claimant that if Dr. Cairns had given her any work restrictions, he would have stated as such on the work release. As a result, the claimant has not provided any additional information about her work release. The employer has not scheduled the claimant to work because she has not provided the requested additional information.

#### **REASONING AND CONCLUSIONS OF LAW:**

A claimant who leaves employment because of an injury and is advised by a physician she is restricted from working for medical reasons and the employer consents to a leave of absence, may be eligible to receive benefits when after recovering from the injury her physician certifies she is able to return to work and she offers to return to work, but the employer does not have any work for her to do. Iowa Code § 96.5(1)d.

The claimant established she was injured when she broke her hip after work on September 2, 2010. Her physician restricted her from work and the employer granted her a medical leave of absence. The claimant's physician gave her a work release indicating she could return to work on January 3, 2011. When the claimant informed the employer on December 20, 2010, she was ready to return to work on January 3, 2011, and provided her physician's work release. The employer's manager and human resource representative were not satisfied with the medical release the claimant provided and asked her to have her physician indicate if she did not or did not have any work restrictions. While the employer asserted there is a job available for the claimant when she is able to return to work, the employer has not scheduled the claimant to work because she has not provided additional information.

The work release the claimant provided speaks for itself. It states the claimant was not able to work June 30 through January 3, 2011. It does not state she has work restrictions. It does not say she has no work restrictions either. Even though the employer had concerns when the claimant asked to return to work as of January 3, her physician released her to work and did not indicate she had any work restrictions. While the claimant attempted to get her physician to clarify the work release, he was not actively practicing when the claimant talked to his nurse.

The additional information the employer request is not reasonable because if she had any work restrictions, her doctor would have listed those restrictions on the release form. For unemployment insurance purposes the claimant is qualified to receive benefits as of February 6, 2011, the effective date of her claim.

**DECISION:**

The representative's April 1, 2011 determination (reference 01) is affirmed. The claimant recovered from an injury and after her doctor released her return to work; the employer would not schedule her to work. As of February 6, 2011, the claimant is qualified to receive benefits, provided she meets all other eligibility requirements. The employer's account is subject to charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs