

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GABRIELL R MORROW
Claimant

APPEAL NO: 11A-UI-12571-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IA VETERANS HOME - MARSHALLTOWN
Employer

OC: 06/12/11
Claimant: Appellant (4)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 15, 2011, reference 02, that concluded she was unavailable for work from June 12, 2011, to August 6, 2011. A telephone hearing was held on October 18, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant was employed as a certified nursing assistant from June 2009 through June 10, 2011. In May 2011, the claimant applied for and received approval to be off work on Family and Medical Leave Act (FMLA) leave due to mental health issues. She had certification from a mental health professional that she was unable to work.

The claimant actually had applied for FMLA to care full time for her stepfather who had terminal cancer but when the approval was given based on her mental health issues, she decided to accept that rather than redo all the paperwork. She was on FMLA up until her employment ended on June 10, 2011, but she had been informed by her therapist who had filled out the FMLA paperwork that the claimant could contact her and she would release the claimant at any time.

The claimant filed a new claim for unemployment insurance benefits with an effective date of June 12, 2011.

The claimant participated in an appeal hearing regarding her separation from employment on July 28, 2011. She stated and the administrative law judge found that as of July 28, 2011, her treating physician has not released her to work.

The claimant had not obtained a written release to return to work from her mental health provider until September 2, 2011. Her therapist who had treated the claimant in June, July, and August said she was able to work as of June 1, 2011, to the present. The person conducting the fact-finding interview received this statement from her therapist and contacted the claimant and told her that she needed a statement from a medical doctor as to her ability to work as of July 28 (which was based on the date of the appeal hearing). On September 12, a medical doctor who saw the claimant on September 12, 2011, faxed a patient release form to the fact finder releasing the claimant to work effective July 28, 2011.

The claimant continued to provide full-time care for her stepfather after June 10, 2011. The claimant asserted that at some point, she and her mother received additional help so that she was not required to care for her stepfather full time as she had in the past. She could not provide specific information about this but said that by the time of the appeal hearing on July 28, 2011, that was the case. The claimant has been looking for full-time work since June 2011 as a CNA.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. Iowa Code § 96.6-2.

The facts of this case are perplexing because the claimant's certification to be off work on FMLA was for a different reason than the claimant says was the real reason. In terms of restrictions on her ability to work due to any medical or mental health issue, she has a release from the mental health provider who certified she was unable to work for a date (June 1) prior to her employment separation in June. The claimant explained that she did not try to get a release from her therapist in June because she still needed to be off work caring for her stepfather. I will accept the claimant did not have any mental health issue that prevented her from working as of the effective date of her claim on June 12. The medical doctor who released her as of July 28 was just using the date he understood was the relevant date for unemployment insurance purpose.

In regard to the restrictions based on her need to care for her stepfather, the facts are equally confusing. The claimant asserts that the reason she was not working prior to June 12, 2011, was because she was needed to care full time for her stepfather. She then argued that she was available to work when she filed for unemployment benefits despite her stepfather's medical issues. She cannot have it both ways. The need to care for her stepfather while she was employed would not change at the point she became unemployed. If she could not work for Iowa Veterans Home because she was needed to care for her stepfather, she would not be available to work for some other employer for that same reason unless something changed. When asked about this, the claimant testified that at some point, she and her mother received additional help so that she was not required to care for her stepfather full time as she had in the past. She could not provide specific information about this but said that by the time of the appeal hearing on July 28, 2011, that was the case.

The claimant has not satisfied her burden of proving that she was available prior to July 28, 2011. Since availability issues are decided on a majority of the week basis, the claimant should be found eligible effective July 31, 2011, and afterward, but not before. Her claim should be unlocked effective July 31, 2011.

DECISION:

The unemployment insurance decision dated September 15, 2011, reference 02, is modified in favor of the claimant. The claimant is ineligible to receive unemployment insurance benefits from June 12 through July 30, 2011. The claimant is eligible for benefits effective July 31, 2011, and afterward. Her claim should be unlocked effective July 31, 2011.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css