

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA A MESSERSCHMIDT
Claimant

APPEAL NO. 11A-UI-05226-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S GENERAL STORES
Employer

OC: 03/22/09
Claimant: Appellant (2-R)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Laura Messerschmidt filed a timely appeal from the April 11, 2011, reference 03, decision that denied benefits effective October 24, 2010 based on an Agency conclusion that Ms. Messerschmidt was unable to perform work due to illness. After due notice was issued, a hearing was started on May 16, 2011 and concluded on May 27, 2011. Ms. Messerschmidt participated. Casey's submitted written notice that the employer elected not to participate in the hearing. The conclusion of the hearing was postponed to May 27, 2011 to give Ms. Messerschmidt an opportunity to submit medical documentation. Exhibits A and B were received into the record on May 27, 2011. The administrative law judge took official notice of the Agency's administrative record (DBRO) of wages reported for the claimant and benefits disbursed to the claimant. The hearing in this matter was consolidated with the hearing in Appeal Numbers 11A-UI-05224, 05225, and 05227-JTT.

ISSUE:

Whether Ms. Messerschmidt has been able to work and available for work since October 24, 2010.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Laura Messerschmidt established a claim for unemployment insurance benefits that was effective March 2, 2009 and received benefits. The claim was established in response to Ms. Messerschmidt's March 23, 2009 separation from employment with Black Hawk County. Ms. Messerschmidt received regular unemployment insurance benefits for the period of March 22, 2009 through October 3, 2009. Thereafter, Ms. Messerschmidt received emergency unemployment compensation benefits from October 4, 2009 through March 20, 2010, when the benefit claim year expired.

Ms. Messerschmidt established a new claim for benefits in a new claim year. That claim was effective March 21, 2010. Ms. Messerschmidt received regular benefits for the week ending March 27, 2010 and for the period of April 18, 2010 through July 3, 2010, at which time regular

benefits were exhausted. Ms. Messerschmidt then received emergency unemployment compensation benefits for the period of July 4, 2010 through December 25, 2010. The regular benefits Ms. Schmidt received for the period of October 24, 2010 through December 25, 2010 totaled \$1,566.00. For that same period, Ms. Messerschmidt received an additional \$175.00 in federal stimulus unemployment insurance benefits. These were disbursed at a rate of \$25.00 per week. Ms. Messerschmidt's eligibility for the federal stimulus benefits was contingent upon her being eligible for the emergency unemployment compensation benefits. The total amount disbursed to Ms. Messerschmidt for the period of October 24, 2010 through December 25, 2010 was \$1,741.00.

Ms. Messerschmidt then established an additional claim for emergency unemployment insurance benefits, based on the March 22, 2009, original claim date. The new claim for emergency benefits was effective December 26, 2010. For the period of December 26, 2010 through April 2, 2011, Ms. Messerschmidt received emergency compensation benefits totaling \$5,250.00.

Ms. Messerschmidt was employed at Casey's on a part-time basis for just a few days in September 2010 before she voluntarily quit on September 18, 2010, ostensibly because the work was not interesting to her. Prior to that, Ms. Messerschmidt worked part-time for a very short period at Windsor Health Care in Cedar Falls before she left that employment because she disliked the hours and because she wanted to be available to assist with the care of her six-month-old grandchild, who was residing with Ms. Messerschmidt. Workforce Development records indicate there was one other brief employment during the third quarter of 2010. Ms. Messerschmidt reported \$200.00 in wages for the week that ended September 18, 2010, \$400.00 in wages for the week that ended September 25, 2010, and \$90.00 in wages for the week that ended October 23, 2010. This last week of reported wages was from about a month *after* Ms. Messerschmidt separated from Casey's, supporting the notion that there was additional very brief employment.

On April 4, 2011, a Workforce Development representative entered a reference 07 decision that denied benefits effective October 24, 2010 based on an Agency conclusion that Ms. Messerschmidt was unable to perform work due to illness.

Ms. Messerschmidt has provided a signed memo from Dr. Rick McCormick, D.O., of Medical Associates of Independence, L.L.C. The note is dated May 19, 2011. The signed memo indicates that Ms. Messerschmidt is a patient, that she is diagnosed with irritable bowel syndrome (IBS) and anxiety and depression secondary to the IBS diagnosis. The memo indicates that Ms. Messerschmidt "has had no restrictions to prevent her working from September 2010 to the present date. Laura remains to be physically and mentally capable of working." Submitted with the memo are patient notes dated September 29, 2010; November 12, 2010; January 12, 2011; January 21, 2011; and February 3, 2011. The September 29, 2010 note references worsening IBS symptoms along with a related increase in depression. The note indicates: "Laura is a 49 year-old who presents today with worsening issues with her IBS and feeling more depressed because she is having some difficulty staying at work." Dr. McCormick prescribed Amitriptyline in the hope that it would help with both issues. There is an additional hand-written entry in the dated notes. It is dated October 27, 2010. It indicates that the physician had faxed clinic notes from "11/07 to present" for consideration in connection with a disability claim.

Ms. Messerschmidt became a patient of Peoples Community Health Clinic in Waterloo in February 2011 and sought treatment from the facility on February 8, 2011. Ms. Messerschmidt has submitted a signed note dated May 17, 2011, on a prescription pad. The note is signed by

Carrie Berry, A.R.N.P. The note states simply: "Patient able to work." Ms. Berry's notes from the February 8, 2011 visit indicate the following diagnoses: diabetes (diet controlled), hypertension, irritable bowel syndrome, anxiety, weight gain, left upper abdominal mass. The notes indicate the following as the plan of treatment: General Surgery referral to Iowa City for left upper abdominal mass, refill Bystolic, fasting tabs to include hemoglobin ALC, CMP and a lipid profile, a mammogram referral, and weight loss.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 24.22(1)a and (2) provide:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

A claimant who is ill and presently unable to perform work due to illness is disqualified for benefits as being unavailable for work. See 871 IAC 24.23(1).

Ms. Messerschmidt has provided documentation from two medical practitioners indicating that she has been able to work from September 2010 until the present, despite her health issues. Based on that evidence, the administrative law judge concludes that Ms. Messerschmidt has been able and available for work since October 24, 2010, the starting disqualification date referenced in the lower decision.

There is sufficient evidence in the record to raise the questions of whether Ms. Messerschmidt continues to be available for work and whether she is actively and earnestly seeking employment. This matter will be remanded so that Ms. Messerschmidt's continued availability for work, effective May 29, 2011, may be determined.

DECISION:

The Agency representative's April 11, 2011, reference 03, decision is reversed. The claimant has been able and available for work since establishing her claim for benefits. Accordingly, the claimant is eligible for benefits, provided she is otherwise eligible.

This matter is remanded to the Claims Division for determination of the claimant's availability for work and whether she has made an active and earnest search for new employment effective May 29, 2011.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw