

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SHERRY J MYSAK**  
Claimant

**ROCKWELL COLLINS INC**  
Employer

**APPEAL 17R-UI-08644-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/16/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the May 11, 2017, (reference 01) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on June 5, 2017. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate. Claimant's Exhibits A and B were received after the record was left open until June 15, 2017, for claimant's submission of Exhibit B. Claimant appealed to the EAB, which remanded for more information. As of the remand hearing date on September 11, 2017, claimant still had not submitted a medical release to work from her treating physician indicating she can or cannot work with or without restrictions. Nor did she present any new or additional information about the issue in question. The record was left open through September 20, 2017, for any additional information claimant wished to provide. The morning of September 20, claimant requested an "extension of time to see legal guidance." The request is denied as claimant has had since the original hearing notice mailed on May 24, 2017, and the second hearing notice was mailed on August 28, 2017, to seek legal counsel. Further, on September 11, the ALJ suggested claimant take the June 19, 2017, appeal decision to her medical provider to obtain the required information for presentation to the employer and to IWD. As of September 20, 2017, there was no evidence that she had done that.

**ISSUE:**

Is the claimant able to work and available for work effective April 16, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant remains employed with Rockwell Collins as a full-time logistics specialist. She applied for an accommodation while refreshing her soldering skills and submitted a December 21, 2016, note from psychiatric nurse practitioner Dennis Pruckler, ANRP, asking the employer to take into consideration claimant's difficulty making rapid complex decisions while working under pressure. (Claimant's Exhibit A, p. 9) She continued to work until January 27, 2017, when there was behavior that prompted the employer to require she take a medical leave of

absence.<sup>1</sup> On June 7, 2017, Pruckler submitted a note "To whom it may concern" that claimant is diagnosed with Bipolar Disorder and Attention Deficit Hyperactivity Disorder. (Claimant's Exhibit B) He did not indicate whether or not claimant is able to work with those conditions or if she has any work restrictions other than the accommodations requested in December 2016. Nor did he specify any accommodations that would allow claimant to work in her unspecified regular job duties, with or without limitations.

Since her last day of work, her claim effective date, or since the record was left open after the June 5, and September 11, 2017, hearings, claimant has not presented the employer or IWD with any medical evidence of her ability to work in her regular job or in any other type of employment for which she is capable of performing given her education, training, experience and work history. Since ability to and availability for work may be determined week-by-week, claimant may present that information to the local IWD Iowa Works office at any time for review of her eligibility for benefits. Overall, there has been a lack of communication between claimant and her medical provider, with the employer about specific abilities and accommodation requirements as it pertains to her regular job duties or if she will be able to work in that job at all, with or without restrictions or accommodations.

### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective April 16, 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

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<sup>1</sup> The employer does not dispute claimant's qualification for benefits based upon the temporary separation. It questions her ability to and availability for work. It called the leave of absence "voluntary" in its response to the notice of claim in the administrative record. This decision accepts claimant's testimony and argument that it was not voluntary.

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. (Emphasis added.)

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.

Being able to and available for work are requirements a claimant must meet to be eligible for unemployment insurance benefits. **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. Emp'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)). (Emphasis added.)

Subsection d of Iowa Code section 96.5(1) provides an **exception** where:

The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, **when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and ... the individual's regular work or comparable suitable work was not available**, if so found by the department, provided the individual is otherwise eligible. (Emphasis added.)

The statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. **The exception in section 96.5(1)(d) only applies when an employee is fully recovered and the employer has not held open the employee's position.** *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)). (Emphasis added.)

Iowa Code section 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162

(Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

The ALJ has no authority in the principles of legal equity. Because claimant has only provided evidence of her diagnosis and had not provided medical information to meet her burden of proof to establish her ability to work since her claim effective date of April 16, 2017, benefits are withheld until such time as she obtains a medical release to return to her regular job duties, with specific limitations or requests for accommodation, if any. At that point, there must be an evaluation of whether employment, with reasonable accommodation if appropriate, is available. To expedite the process, she may present that information directly to the employer *and* to the local IWD Iowa Works office during regular business hours.

**DECISION:**

The May 11, 2017, (reference 01) unemployment insurance decision is affirmed. The claimant has not established her ability to or availability for work since her effective claim date of April 16, 2017. Benefits are withheld until such time as the claimant obtains a medical release to return to work with any conditions, offers her services to the employer, and no suitable, comparable work is available considering reasonable accommodation; or if she is involuntarily separated before that time.

In short, claimant and her medical provider must provide IWD and the employer with specific information about her specific abilities and accommodation requirements as it pertains to her regular job duties or if she will be able to work in that job at all, with or without restrictions or accommodations. At that point the claimant's ability to and availability for work or separation from employment may be reexamined by the Benefits Bureau in a fact-finding interview.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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