

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA S RETTERATH
Claimant

APPEAL NO. 08A-UI-04605-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLONIAL MANOR OF ELMA INC
Employer

OC: 03-30-08 R: 02
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 5, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 28, 2008. The claimant did participate and was represented by Nick Larson, Attorney at Law. The employer did participate through (representative) Jim Wallace, Administrator and Janice Howe, Director of Nursing. Employer's Exhibit One was received. Claimant's Exhibit A was received.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant is still an employee of the employer. The claimant works as a certified nurse's aide and as a certified medical aide. The employer scheduled the claimant to work both as a certified nurse's aide and as a certified medical aide based upon their scheduling needs. She was injured in a non-work-related car accident on February 6 and thereafter did return to work. She was off work on FMLA from March 4 through March 24. As a result of her car accident she was given work restrictions on April 14, 2008 that included no lifting over ten pounds, no twisting and no sudden movement. She returned to work from April 14 through April 21, but the work she was doing, both as a certified nurse's aide and as a certified medication aide required that she violate her work restrictions. On April 18 the employer sent the claimant for assessment by Dr. Broghammer to see if she could safely work within her work restrictions. Dr. Broghammer was given the claimant's job descriptions in order to help him made a determination. On April 21 Dr. Broghammer determined that the claimant's work restrictions would not allow her to perform either the certified nurse's aide job or the certified medication aide job. The claimant was told by the employer on April 14 that she would not be allowed to return to work until she could do so without any work restrictions. The employer does not accommodate non-work-related injury work restrictions.

The claimant has continued to see Dr. Rosack who took her off work completely beginning on May 14 through June 14, 2008. (See Employer's Exhibit One)

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 21, 2008.

Iowa Code § 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 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.

871 IAC 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 physician and has not been released as being able to work.

Inasmuch as the medical condition was not work-related and the treating physician has not released the claimant to return to work without restriction, the claimant has not established her ability to work. The claimant's treating physician, Dr. Rosack, has the claimant off work through at least June 14, 2008. Employer is not obligated to accommodate a non-work-related medical condition, thus until claimant is released to perform full work duties, she is not considered able to or available for work. Benefits are denied.

DECISION:

The representative's decision dated May 5, 2008, reference 01, is affirmed. The claimant is not able to work and available for work effective April 21, 2008. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs