

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKIE L OWENS

Claimant

APPEAL NO: 06A-UI-09152-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FROMMELT SAFETY PRODUCTS CORP

Employer

**OC: 08-06-06 R: 04
Claimant: Appellant (2)**

Section 96.5-1-d – Voluntary Leaving/Illness or Injury
Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 5, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 5, 2006. The claimant did participate and was represented by Michael McEnroe, Attorney at Law. The employer did participate through (representative) Janet Snoozy, Human Resources Manager, Jody Ungs, Human Resources Assistant and Matt Mowry, Safety Coordinator. Claimant's Exhibits A and B were entered and received into the record. Employer's Exhibit One was entered and received into the record.

ISSUES:

Is the claimant temporarily separated from her employment due to work-related work restrictions?

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: Claimant was employed as an industrial sewer full time beginning July 25, 2005 through August 8, 2006 when she stopped working due to a work-related injury when the employer would not accommodate her work restrictions.

The claimant sustained a work-related injury in December 2005 that the employer accepted as compensable. As a result of that treatment, the claimant was treated by Dr. Yankey who did offer the claimant treatment for her shoulders and arms. Eventually, Dr. Yankey determined that while the claimant's work activities were aggravating her preexisting shoulder/arm condition, he had no further treatment to offer her and released her to return to work without work restrictions. While the claimant was being treated by Dr. Yankey she had work restrictions that were being accommodated by the employer. The claimant worked at different lighter duty jobs that were actual jobs in the plant. Some of her duties included making zippers, filing, and copying documents, putting together binders and data entry work at a computer. The employer

has now determined that the claimant's injury was not work related and they will not accommodate her work restrictions any longer. The claimant is currently on FMLA and remains an employee. Her current work restrictions include no lifting over 20 pounds, no pushing/pulling or stretching. When the claimant was being treated by Dr. Yankey her work restrictions include no lifting over five pounds. The employer's policy is that they will not accommodate any work restrictions that result for a personal or non-work-related injury. Since she last worked on August 8, 2006 the claimant has not received any workers' compensation benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant is temporary separated from her employment with good cause attributable to the employer.

Iowa Code section 96.5-1-d provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

d. 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.

The claimant's injury to her shoulders/arms was initially treated by the employer as a work-related injury and the claimant was offered medical treatment and accommodation of her work restrictions. The employer has since determined that the claimant's current medical situation is not the result of a work-related injury. Dr. Yankey opines that the claimant's work activities aggravate, exacerbate or irritate the claimant's arms/shoulder. Where disability is caused or aggravated by the employment, a resultant separation is with good cause attributable to the employer. Shontz v. IESC, 248 N.W.2d 88 (Iowa 1976). Thus, the administrative law judge concludes that for purposes of unemployment insurance benefits, the claimant is temporarily separated from her work due to a work-related injury that has resulted in work restrictions which the employer cannot or will not accommodate.

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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 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.

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work, albeit with work restrictions, the claimant has established an ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated September 5, 2006, reference 01, is reversed. The claimant is able to work and available for work effective August 8, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs