

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KATIE PETERS
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GARNER IA 50438

WINNEBAGO INDUSTRIES
PO BOX 152
FOREST CITY IA 50436-0152

Appeal Number: 04A-UI-05744-RT
OC: 06-29-03 R: 02
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Katie Peters, filed a timely appeal from an unemployment insurance decision dated May 19, 2004, reference 01, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on June 16, 2004, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where she or any of her witnesses could be reached for the hearing, as instructed in the notice of appeal. Gary McCarthy, Personnel Supervisor, and Colleen Bagley, Personnel Coordinator, participated in the hearing for the employer. The administrative law judge takes official notice of Iowa Workforce Development unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: The claimant was and is, at all material times hereto, employed by the employer since November 8, 1993. However, her current status is inactive. The claimant's last day of work was September 12, 2003, when she went on 26 weeks of disability. She was on a leave of absence during that time and remains on a leave of absence. On March 31, 2004, the claimant used up her disability pay and went on inactive status at that time. The claimant is still inactive and on a medical leave because she has not provided a doctor's slip to the employer indicating that she is able to return to work. The claimant's most recent doctor's slip to the employer is dated March 23, 2004, and states that the doctor is unsure if the claimant is able to work. The claimant has obstructive sleep apnea, causing excessive daytime somnolence. At fact-finding the claimant stated that she is not able to work and has not been released by her doctor and that she has been diagnosed with "COPD." Attached to the claimant's appeal is a statement by a physician dated October 6, 2003, indicating that the claimant could return to work on October 7, 2003, but adds should not be put in unsafe positions while she is sleepy. The claimant filed for unemployment insurance benefits effective June 29, 2003 and reopened her claim for benefits effective May 2, 2004. However, the claimant has applied for no weekly benefits and has received no benefits since reopening her claim effective May 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is ineligible to receive unemployment insurance benefits because she is and was, at relevant times, not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits for that reason.

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)(2) 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.

(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.

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused from such provisions. New Homestead v. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence either that she is able and available for work or that she is excused from such provisions. The claimant did not participate in the hearing and provide evidence either that she is either temporarily unemployed or partially unemployed so as to excuse her from the provisions that she be able and available for work nor did she provide evidence that she was able and available for work. At fact-finding the claimant stated that she is not able to work and has not been released by her doctor and she has been diagnosed with "COPD." This is confirmed by the employer's witnesses, who credibly testified that the claimant has not worked since September 12, 2003, when she went on disability leave for 26 weeks and then when she used up disability leave, stayed on a medical leave, but is shown as inactive. The last doctor's slip received by the employer is dated March 23, 2004 and states that the physician is unsure if the claimant is able to return to work and diagnoses the claimant with obstructive sleep apnea, causing excessive daytime somnolence. This doctor's statement supercedes the claimant's statement attached to her appeal dated October 6, 2003, stating that the claimant can return to work but should not be put in unsafe positions while she is sleepy. The administrative law judge is not even convinced that this statement is evidence that the claimant is able to work because it states that she should not be placed in unsafe positions, and this is very vague and open. In any event, the most recent doctor's slip by the employer supercedes this slip. Accordingly, the administrative law judge concludes that the claimant is not able to work. Further, the administrative law judge concludes that the claimant is not available for work. An individual who is ill and presently not able to work due to illness and has a medical report on file to that effect and was granted a leave of absence, are reasons for a claimant to be disqualified for being unavailable for work. See 871 24.23(1), (6), and (10). Accordingly, the administrative law judge concludes that the claimant is not able and available for work and, as a consequence, she is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until or unless she demonstrates that she is able and available for work and is otherwise eligible to receive unemployment insurance benefits.

DECISION:

The representative's decision dated May 19, 2004, reference 01, is affirmed. The claimant, Katie Peters, is not entitled to receive unemployment insurance benefits until or unless she demonstrates that she is able and available for work, because presently she is not able and available for work and is ineligible to receive unemployment insurance benefits.

b/b