

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

NICOLE R CONRY
Claimant

MINNEAPOLIS RAG STOCK CO
Employer

APPEAL 15A-UI-13080-DGT
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/01/15
Claimant: Appellant (1)

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:

Claimant filed an appeal from a decision of a representative dated November 18, 2015 (reference 01) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on December 15, 2015. Claimant participated personally. Employer participated by Corie Meyer, Director of Stores. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was undergoing severe stress at work and in her personal life in the beginning of January 2015. Claimant sought medical treatment and received written medical orders that advised claimant to seek out a less stressful work environment.

Claimant later requested and was granted a leave of absence without pay in the fall of 2015. Claimant continues to be on a voluntary leave of absence at this time from her employment. Her position as the manager of her store is being held open for her if she is able to return to work at a later date.

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 November 1, 2015.

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".

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 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.

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

The Court found no separation from employment and allowed partial benefits where claimant's work aggravated chronic lung disease prevented him from full-duty work but he reported daily for assignments as available. *FDL Foods v. Emp't Appeal Bd. and Lambers*, 460 N.W.2d 885 (Iowa Ct. App. 1990).

The Supreme Court ruled that a claimant with a non-work related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

Inasmuch as the medical condition is non-work-related and the treating physician has not released the claimant to return to work without restriction, she has not established her ability to work while still an employee of employer until such time as she is released back to work or until she is discharged and is able to apply for work which she is qualified. While she may be able to perform light work duties, the employer is not obligated to accommodate a non-work-related medical condition; and since she has not been released to perform her full work duties, she is not considered able to or available for work.

The employer is not obligated to accommodate a non-work-related medical condition. Benefits are withheld until such time as the claimant obtains a full medical release and she is able to return to work.

DECISION:

The representative's decision dated November 18, 2015 (reference 01) is affirmed. The claimant is not able to work and available for work effective November 1, 2015. 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.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/can