

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBBIE L STRAWHACKER
Claimant

APPEAL 20A-UI-00670-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPTIMAE LIFESERVICES INC
Employer

OC: 04/28/19
Claimant: Appellant (4)

Iowa Admin. Code r. 871-24.23(10) – Eligibility – A&A – Leave of absence
Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On January 23, 2020, Debbie Strawhacker (claimant) filed an appeal from the January 17, 2020 (reference 03) unemployment insurance decision that found claimant was granted a leave of absence and as such was voluntarily employed and not available for work. Benefits were denied as of December 1, 2019.

A telephone hearing was held on February 7, 2020. The parties were properly notified of the hearing. The claimant participated personally. Optimae Lifeservices Inc. (employer) participated by Regional HR Manger Newquist.

Employer's Exhibits 1-6 were admitted. Claimant's Exhibit A was admitted.

ISSUE:

Is the claimant able to and available for work?

Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant's first day of employment was May 24, 2019. Claimant initially worked for employer as a full-time direct support professional. This work consisted mainly of assisting individuals in a residential setting. Claimant's immediate supervisor was Nancy Meyer. The last day claimant worked on the job was December 23, 2019. Claimant separated from employment on January 20, 2020. Claimant was discharged on that date.

Claimant went on a medical leave on July 30, 2019 due to a foot injury. Beginning August 1, she was restricted to desk duty for 8-12 weeks. Exhibit A. On September 13, she was restricted to

desk duty for six weeks. Exhibit 1. On October 17, she was allowed to return to work November 4 with a three-day per week schedule with nonconsecutive days off. Exhibit 2.

Claimant returned to work on November 4. Claimant was able to do work three days a week and do light-duty on the other days, but light-duty work of that nature was not available. On November 26, she was restricted to working two days on, two days off, with no more than nine hours of work per day for four days per week. Exhibit 3. On December 18, she was restricted to working every other day for no more than nine hours per day. Exhibit 4. Employer accommodated claimant to a degree until December 23. At that time, claimant's status was changed to part-time because she could not work consecutive days.

On December 26, claimant's doctor excused her from work until she could see another doctor on January 6. Exhibit 5. On January 3, she was excused from work through February 3, until she could see a specialist. Exhibit 6. Claimant was discharged on January 20 after employer received the January 3, 2020 note excusing her from work through February 3. Claimant was discharged because employer's policies did not allow her to continue on leave.

Claimant is currently searching for seated work, such as being an aide or administrative assistant, which she is qualified to do. She is able to drive and get to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the January 17, 2020 (reference 03) unemployment insurance decision that found claimant was granted a leave of absence and as such was voluntarily employed and not available for work is MODIFIED in favor of appellant. The administrative law judge concludes claimant is able to work and available for work effective January 20, 2020.

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 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(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

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.

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)).

The medical condition which led to claimant's leave from work and medical restrictions is not work-related, and the treating physician did not release the claimant to return to work without restriction. As such, she has not established her ability to work while she was still an employee of employer. While she was able to perform light work duties, the employer was not obligated to accommodate a non-work related injury, and so her ability to do light duty does not make her able to and available for work.

Since the employment ended on January 20, 2020, claimant's ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since claimant is able to perform sedentary jobs, she is considered able to work even if she

cannot yet return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of January 20, 2020.

Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The January 17, 2020 (reference 03) unemployment insurance decision is MODIFIED in favor of appellant. The claimant is able to work and available for work effective January 20, 2020. Benefits are allowed as of that date, provided she is otherwise eligible.

Andrew B. Duffelmeyer
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Decision Dated and Mailed

abd/scn