

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

SUE A MUCHOW
PO BOX 133
FREMONT IA 52561-0133

IOWA WORKFORCE DEVELOPMENT
JULI PUTZIER QUALITY CONTROL
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

Michele Andre, IWD/Quality Control
Dan Anderson, IWD

Appeal Number: 08-IWDUI-116
OC: 02/10/08
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 the department. 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)

October 22, 2008

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22 – Benefit Eligibility Conditions
871 IAC 24.23(6),(34) – Physician Report/Personal Injury

STATEMENT OF THE CASE

Claimant Sue Muchow filed an appeal from an Iowa Workforce Development Department decision dated July 1, 2008, reference 02, which held the claimant ineligible for benefits effective February 10, 2008, because, according to her physician, she was unable to perform work.

Hearing was originally scheduled for July 22, 2008. It was subsequently rescheduled for August 4, 2008. Ms. Muchow did provide a telephone number to appear for the first hearing, but did not supply a number for the rescheduled hearing. She did not appear on August 4, 2008. Juli Putzier, a quality control auditor for Iowa Workforce Development, appeared and testified on behalf of the department. On August 8, 2008, Administrative Law Judge Randy Stephenson issued a decision affirming the department.

Ms. Muchow appealed ALJ Stephenson's ruling because she had been unaware she needed to provide a telephone number for the second hearing. On August 29, 2008, the Employment Appeal Board issued a decision vacating ALJ's decision and remanding the case to be reset for hearing.

A new notice of hearing was issued by the undersigned on September 11, 2008 scheduling hearing by telephone conference call on October 6, 2008. At the time of hearing, Ms. Muchow failed to answer her telephone. She did not appear or participate in the hearing. Juli Putzier appeared and participated on behalf of Iowa Workforce Development. The department's Exhibit 1, a Request for Medical Report regarding Ms. Muchow was admitted into evidence, as was Exhibit A, a letter signed by Scott B. King, DPM regarding Ms. Muchow's physical condition.

FINDINGS OF FACT

Sue Muchow filed a claim for unemployment insurance benefits effective February 10, 2008. She reported to the department that she was laid-off from Christian Farms & Feed Lots, Inc. where she had worked as a herdsman from October 3, 2007 to February 6, 2008.

The Quality Control division of Workforce Development randomly selected Ms. Muchow's claim for review and assigned it to Juli Putzier to audit. Ms. Putzier mailed a notice to Ms. Muchow on June 9 to set-up a telephone interview for June 17, 2008. Initially, the interview focused on Ms. Muchow's claim for the week ending May 31, 2008.

During the telephone interview, Ms. Muchow informed Ms. Putzier that she had incurred a non-job related injury to her left foot and that it had been placed in a boot. Ms. Muchow stated she could not work on it. When Ms. Muchow told her employer about the need to be off work with the prospect of surgery and a long recovery she was laid-off from the job. Ms.

Putzier then obtained Ms. Muchow's waiver of department notice and expanded the interview inquiry to a review of Ms. Muchow's entire claim. Ms. Muchow offered that she was looking for housekeeping work but because of her injury she was uncertain whether she could actually do such work.

Ms. Putzier then submitted a request for medical report to Ms. Muchow's physician, Dr. King. Dr. King reported that he began treating Ms. Muchow on January 22, 2008 for chronic plantar fasciitis, and that he last treated her on June 25, 2008. Dr. King also stated on the form that Ms. Muchow could not perform her occupation from January 2008 to the present date which was June 25, 2008. He stated she needed surgery and a six-week healing period. (Exhibit 1).

Subsequently, on July 7, 2008, Dr. King submitted a letter to the department on behalf of Ms. Muchow. That letter stated:

Sue Muchow will be having surgery on July 9, 2008. I have not taken her off work prior to her surgery date.

On February 6, 2008, we put her in a cam boot, however, she was told to try to stay weight bearing with the cam boot with no restrictions but I told her if it was to[o] painful she needed to use crutches and non-weight bearing but at that time I did not take her off work. When she came back in on 3-5-08 she was doing much better and she discontinued wearing the cam boot on 3-18-08.

She will be temporarily disabled due to her surgery on July 9, 2008 for approximately 4-6 weeks depending on her recovery process.

(Exhibit A).

CONCLUSIONS OF LAW:

The issue is whether Ms. Muchow was able and available for work.

Iowa law requires that an individual is eligible to receive unemployment benefits only if he or she is able and available to work.¹ The department has adopted rules which define "able" as requiring the physical and mental ability to work in some gainful employment which need not be the individual's regular employment.² The availability requirement is met when an individual is "willing, able, and ready to accept suitable work."³

On the other hand, an applicant for benefits must be disqualified as unavailable if a physician submits a medical report stating he or she is not able to work or if the

¹ Iowa Code section 96.4(3).

² 871 IAC 24.22(1).

³ 871 IAC 24.22(2).

individual is not able to work because of a personal injury.⁴

The preponderance of the evidence in this case clearly shows that Sue Muchow was unavailable for work. Her physician submitted a medical report specifically stating she could not work from January 2008 through the date the form was completed, June 25, 2008. Her layoff from Christian Farms and Feed Lots serves to bolster that conclusion. Finally, while Ms. Muchow told Ms. Putzier she was considering a housekeeping job, she expressed doubt as to her physical ability to perform such work.

While Dr. King submitted a subsequent letter stating he did not take Ms. Muchow off work, it appears that this letter was an attempt to ameliorate the effects of his initial report. The information contained in that report, as reinforced by Ms. Muchow's layoff and her doubts as to whether she could perform other work, is hereby deemed more credible.

DECISION

The decision of the representative dated July 1, 2008, reference 02, is **AFFIRMED**. The claimant is not able to perform work due to a non-job related injury based on a physician report, and she is not eligible to receive benefits effective February 10, 2008.

⁴ 971 IAC 24.23(6), (34).