

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICKY A STARK
Claimant

APPEAL NO. 14A-UI-11296-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ENGINEERED PLASTIC COMPONENTS INC
Employer

OC: 09/28/14
Claimant: Respondent (3)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 23, 2014, reference 02, decision that allowed benefits to the claimant effective September 28, 2014, provided she was otherwise eligible, based on an agency conclusion that she was able to work and available for work. After due notice was issued, a hearing was held on November 19, 2014. Claimant Vicky Stark participate. John Johnson represented the employer. Exhibit One was received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits disbursed to the claimant and of the claimant's use of the voice response unit to make weekly benefit claims.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant is temporarily laid off or on a leave of absence.

Whether the employer's account may be charged for benefits paid to the claimant.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Vicky Stark commenced her full-time employment with Engineered Plastic Components, Inc., (EPC) in June 2012 and last performed work for the employer on August 19, 2014. Ms. Stark's immediate supervisor was Claudia "Delphina" Garcia, First Shift Supervisor. Ms. Stark's regular work hours were 7:00 a.m. to 3:00 p.m., Monday through Friday. Ms. Stark was a manufacturing press operator. While her written job description includes a requirement that she be able to lift 40 pounds, the employer had multiple press machines that did not require such heavy lifting.

Ms. Stark went off work on August 20 so that she could undergo surgery to repair an abdominal hernia. Ms. Stark has a history of hernia issues that predates the employment. In June 2014, Ms. Stark's doctor placed her on a 10-pound lifting restriction. From June through August 19,

2104, the employer assigned work to Ms. Stark that met the 10-pound lifting restriction. Ms. Stark underwent hernia repair surgery on August 21, 2014. On August 29, 2014, Ms. Stark's doctor told Ms. Stark that she could return to work on September 24, 2014 with a 10-pound lifting restriction. The employer received medical documentation that released Ms. Stark to return to work on September 24, 2014 with the 10-pound lifting restriction. Ms. Stark spoke to John Johnson, Human Resources, concerning her plan to return to work. Mr. Johnson directed Ms. Stark to contact Ms. Garcia to arrange for work. On September 24, Ms. Stark contacted Ms. Garcia, but Ms. Garcia indicated there was no work available for Ms. Stark that day. Ms. Stark contacted Ms. Garcia the next day and Ms. Garcia again indicated there was not work available for Ms. Stark that day. On September 26, Ms. Stark contacted Ms. Garcia to inquire about work and Ms. Garcia stated that Ms. Stark would not be allowed to return to work until she was fully released from her restrictions. Ms. Stark and the employer both anticipate that Ms. Stark will be fully released from her restrictions and will return to work on November 26, 2014.

REASONING AND CONCLUSIONS OF LAW:

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. 871-24.22(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.

(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.

In Wills v. Employment Appeal Board, the Supreme Court of Iowa held that an employee did not voluntarily separate from employment where the employee, a C.N.A., presented a limited medical release that restricted the employee from performing significant lifting, and the employer, as a matter of policy, precluded the employee from working so long as the medical restriction continued in place. See Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989). In Wills, the Court concluded that the employer's actions were tantamount to a discharge.

An employer has an obligation to provide an employee with reasonable accommodations that would allow the employee to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993).

That Ms. Stark's request for accommodation of her 10-pound lifting restriction was reasonable, and that the employer had the ability to reasonably accommodate such a restriction is indicated by the parties conduct between June and August 19, 2014. Effective September 24, 2014, Ms. Stark was released to return to work under the same temporary 10-pound lifting restriction as had existed to August 19 and which had been accommodated by the employer through August 19.

A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period. 871 IAC 24.22(2)(j). If at the end of a period of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits. 871 IAC 24.22(2)(j)(1). On the other hand, if the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits. 871 IAC 24.22(j)(2).

The weight of the evidence indicates that the employer has so far failed to reemploy Ms. Stark since her release to return to work with the 10-pound lifting restriction effective September 24, 2014. Both parties indicate that Ms. Stark is still job attached. Both parties anticipate a return to work on November 26, 2014, when Ms. Stark is released to return without restrictions. The weight of the evidence indicates that Ms. Stark has been able and available for work, but in temporary layoff status since September 24, 2014. Ms. Stark is eligible for benefits provided she is otherwise eligible. The employer's account may be charged.

DECISION:

The October 23, 2014, reference 02, is modified as follows. The claimant has been able and available for work since establishing her claim for benefits. The claimant has been in temporary layoff status since establishing her claim for benefits. The claimant is eligible for benefits. The employer's account may be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs