

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RANDY J STILES

Claimant

SONOCO PRODUCTS CO

Employer

APPEAL 15A-UI-01034-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/07/14

Claimant: Respondent (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:

The employer filed an appeal from the January 15, 2015 (reference 01) unemployment insurance decision that allowed benefits based upon being able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on March 12, 2015. Claimant participated. Employer participated through regional human resource manager Aaron Ybarondo.

ISSUE:

Is the claimant able to and available for work effective December 7, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full time as a set-up attendant. Claimant had a medical event at work on May 23, 2014. On June 24, 2014, Anu Baweja, M.D. supported his eligibility for short-term disability benefits from May 27 through November 21, 2014 (Claimant's Exhibit F). She also gave him a "Lifestyle Precautions Safety" letter (Claimant's Exhibit E). On November 24, 2014, Baweja released him to work without restriction but referred again to "Lifestyle Precautions Safety Issues in Epilepsy" (Claimant's Exhibit A). The employer wanted answers to questions about what he could or could not do with respect to his regular job duties (Claimant's Exhibit B). Baweja responded that she was not capable of making those determinations and recommended the employer refer him to an occupational specialist (Claimant's Exhibit C). Neither Baweja nor the employer referred claimant to a specialist so claimant remained on unpaid leave since his short-term disability had expired. He did not apply for long-term disability since he was released without restriction and wanted to return to work. Eventually claimant called Iowa Disability Rights, which sent a letter to the employer that said it was up to employer to identify dangers

and determine if accommodations could be made (Claimant's Exhibit D). On December 19 claimant, his wife, plant manager John Krogh, human resources, production supervisor Jason Brogden, and office administrator Randy Johnson met to discuss accommodations. They agreed he could work a stable shift, take extra breaks and sit when needed, go home if needed, not work more than 9 hours per day (usual 10 hour shifts), and not work with blades exposed and guards open to accommodate the safety concerns. Krogh called claimant to return to work on January 7, 2015.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective December 7, 2014.

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.

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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.* Iowa Code § 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Some employees with restrictions will be disabled and thus protected by the Iowa Civil Rights Act and the American's with Disabilities Act. Although disabled these employees may still be "able and available" if reasonable accommodation by employers would make them so. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993). The employee is not automatically be deemed to be unduly restricted from employment under Iowa Admin. Code r. 871-24.22(2)m.

Inasmuch as the treating physician had released claimant to return to work without restriction effective November 24, 2014 and no suitable work was available or accommodations determined, claimant is able to and available for work.

DECISION:

The January 15, 2015 (reference 01) unemployment insurance decision is affirmed. The claimant is able to work and available for work effective December 7, 2014. Benefits are allowed, provided he is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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