

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CATHY A ZIMMERMAN
Claimant

APPEAL NO. 14A-UI-11206-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR RAPIDS COMM SCHOOL DIST
Employer

**OC: 01/05/14
Claimant: Appellant (4)**

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 October 22, 2014 (reference 03) which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on November 18, 2014. Claimant participated. Employer participated by Jill Bourquin, Human Resources Specialist. Claimant's Exhibits One and Two were 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 last worked for employer on September 3, 2014. Employer discharged claimant on September 29, 2014 because claimant was not able to work at that time.

Claimant was suffering from an injury which was non-work-related and restricted her lifting to five pounds. Employer was not able to accommodate that restriction. Claimant requested an extended leave of absence without pay, but that request was denied by employer.

Claimant continues to be under the five-pound lifting restriction, but she is able to perform office work and other work-related tasks that do not require lifting over five pounds. She is actively seeking full-time work.

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 October 5, 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.

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 Cedar Rapids Community School District effective September 3 through the week ending October 4, 2014. 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 during that period. However, since the employment ended on September 29, 2014 claimant is no longer obligated to return to employer upon her medical release to offer her services. As of that date, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since she has established she is available for jobs that do not require lifting and she is actively seeking that type of work, 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 October 5, 2014. Benefits are allowed beginning on that date.

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 representative's decision dated October 22, 2014 (reference 03) is modified in favor of the claimant. The claimant was not available for work up until her termination date for the week ending October 4, 2014. Claimant is able to work and available for work effective October 5, 2014. Benefits are allowed, provided she is otherwise eligible.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/can