

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JULIA M FREDERICKSEN

Claimant

APPEAL NO: 09A-UI-17578-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY

Employer

OC: 09/27/09

Claimant: Appellant (4/R)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Julia M. Fredericksen (claimant) appealed a representative's November 12, 2009 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits because of not being able and available for work after a separation from employment from Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 5, 2010. The claimant participated in the hearing. The employer's representative responded to the hearing notice on December 29 to indicate that the employer was opting not to participate in the hearing. During the hearing, Exhibits A-1 and A-2 were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant had a separation from her employment with the employer in the summer of 2009; the employer had discharged the claimant due to an attendance issue related to illness. The claimant had suffered from a cancer and various side effects since about December 2008.

Because of the illness-related nature of the claimant's separation from employment, the question was raised as to whether the claimant was sufficiently recovered at the point she filed her claim for unemployment insurance benefits effective September 27 to be "able and available for work" in order to be eligible for benefits. On November 10 the claimant's general practitioner provided a medical report indicating that there was a period of time, from "11/11/08 to present," in which the claimant's condition prevented her from being able to work. This report indicated the claimant had not yet been released for work. Due to this report, the representative's decision denying benefits was issued.

On November 24 the claimant's oncologist provided a medical report indicating that there was a period of time, from "12/2008 to present," in which the claimant's condition prevented her from being able to work. This report indicated that the claimant was now being released to work, but with no walking long distances and no lifting beyond the claimant's level of tolerance. She had been seeking employment in positions which satisfy those restrictions.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, In order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. Being under a doctor's restriction precluding a claimant from working renders the claimant unavailable and unable to work, and therefore ineligible for unemployment insurance benefits for the time covered by the doctor's restriction. 871 IAC 24.22(1)(a); 871 IAC 24.23(1), (6).

As of the week ending November 28, 2009, the claimant has been released for 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); 871 IAC 24.22(1). The claimant has demonstrated that as of that week she is able to work in some gainful employment. Benefits are allowed as of the week ending November 28, 2008, if the claimant is otherwise eligible.

However, it appears that in addition to the week ending November 14, 2009, addressed in the representative's decision, there were additional weeks between the time the claimant established her claim effective September 27 and the week ending November 14 where the claimant had not yet been released for work and was not able and available for work. She was not eligible to receive unemployment insurance benefits for those additional six weeks prior to November 14.

Because benefits were paid to which the claimant was not entitled, those benefits must be recovered in accordance with the provisions of Iowa law. Iowa Code § 96.3-7. Since the claimant is now being found to be eligible to receive benefits for weeks beginning November 28, it is possible that the initial entitlement to benefits for weeks beginning November 28 can be offset against the benefits paid to the claimant for weeks prior to November 14 for which she was not eligible. The matter is remanded to the Claims Section for calculation and offset of any overpayment resulting from the claimant's receipt of benefits for the six weeks prior to November 14.

DECISION:

The representative's November 12, 2009 decision (reference 02) is modified in favor of the claimant. The claimant is now able to work and available for work effective the week ending November 28, 2009. The claimant is qualified to receive unemployment insurance benefits, if

she is otherwise eligible, as of that week. The claimant was not able and available for work and not eligible to receive unemployment insurance benefits for the six weeks prior to November 14, 2009, for which she was paid benefits. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and potential offset against benefits now payable to her beginning the week ending November 30, 2009.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs