

BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319

APRIL V MATTSON

Claimant,

and

CNH AMERICA LLC

Employer.

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HEARING NUMBER: 08B-UI-03047

EMPLOYMENT APPEAL BOARD
DECISION

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5(1)(d)

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES IN PART AND AFFIRMS IN PART** as set forth below.

FINDINGS OF FACT:

The Board adopts the Findings of Fact of the Administrative Law Judge with the modification that the Board deletes the findings of fact made in paragraph 4 of page 3 of the decision (paragraph starting with "Ms. Mattson has not worked...") and inserts in lieu thereof the following:

The records of Iowa Workforce Development, which the Administrative Law Judge took official notice of, show that the Claimant did work for Potpourri Group Inc. from October 20, 2007 through December 20, 2007. The greater weight of the evidence supports the conclusion that the Claimant has established that she was able and available for work until April 7, 2008 but not thereafter.

REASONING AND CONCLUSIONS OF LAW:

The Board adopts the Reasoning and Conclusions of Law of the Administrative Law Judge with the modification that the Board deletes everything on page six of the decision following the paragraph starting with "The greater weight of the evidence" and inserts in lieu thereof the following:

The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. 871 IAC 24.22; Davoren v. Iowa Employment Sec. Comm'n, 277 N.W.2d 602, 603 (Iowa 1979).

To be found 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); 871 IAC 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.

The record establishes that the Claimant's restrictions prior to April 7, 2008 did not prevent her from being capable of performing "some gainful employment." Certainly the fact that the Claimant was gainfully employed for two months after her separation from the Employer supports this conclusion. Moreover, the restrictions imposed prior to this time were not severe enough to exclude the Claimant from the labor market generally. (E.g. Tran at p. 10; Ex. 1). Once the physician imposed restrictions on April 7, however, it is a different matter. Following that action the Claimant is no longer able and available to work and would remain so long as these particular restrictions remain in force.

DECISION:

The administrative law judge's decision dated May 19, 2008 is **AFFIRMED IN PART AND REVERSED IN PART**. The Employment Appeal Board concludes that the Claimant quit for good cause attributable to the Employer and affirms the Administrative Law Judge on this point. The Employment Appeal Board further concludes that the Claimant was able and available for work from December 16, 2007 through April 7, 2008 but that as of April 7, 2008 the Claimant was no longer able and available for work. Accordingly, benefits are allowed for the time between December 16, 2007 and April 7, 2008 but denied starting on April 7, 2008. As a result the overpayment of \$2,241.00 for the period December 16, 2007 through February 16, 2008 is vacated and set aside. This matter is remanded

to Iowa Workforce Development Center, Claims Section for the sole purpose of recalculating the overpayment of attributable to the period February 17, 2008 through May 10, 2008 in accordance with our finding that he Claimant was able and available for work until April 7, 2008 but not on that day or thereafter. The Board expresses no opinion on the "group code" issue as that is a matter wholly internal to Iowa Workforce Development and not ordinarily subject to appeal to this Board.

John A. Peno

Elizabeth L. Seiser

Monique Kuester

RRA/fnv