

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

VERONICA L MARTIN
Claimant

APPEAL NO. 14A-UI-03885-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NETWORK IMAGINING SOLUTIONS INC
Employer

OC: 12/01/13
Claimant: Appellant (4)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 2, 2014, reference 02, that concluded she requested and was granted a leave of absence and was considered voluntarily unemployed effective March 16, 2014. Telephone hearings were held on June 18, July 9, and July 22, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Heather Carlson. Ann Northrup participated in the hearing on behalf of the employer. Exhibits A and B were admitted into evidence at the hearing. The calendar submitted at the hearing held on July 22, 2014 was mistakenly identified as Exhibit B and will be marked as Exhibit C.

ISSUE:

Did the claimant request and was she granted a leave of absence?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked full time for the employer as an assembler from June 26, 2010 to March 14, 2014. The claimant had filed for intermittent leave under the Family and Medical Leave Act (FMLA) in December 2013 to due medical issues she was experiencing. As of March 14, 2014 the claimant had used eight intermittent days, typically for medical appointments.

In January 2014 the claimant was diagnosed by an oncologist, Shobha Chitneni, with multiple myeloma, a cancer of the blood plasma. The recommended treatment was chemotherapy. The doctor recommended a ten-pound weight restriction due to concerns about weakness in her bones.

The claimant continued to work in her assembler job until March 14, 2014. The employer accommodated her work restrictions by having someone lift boxes that exceeded her restrictions on the occasional times it was necessary. On March 14 the claimant was waiting for a supervisor to load her line. The supervisor loaded another assembler's line and looked at the

claimant. She walked away without loading the claimant's line. The claimant waited for 15 minutes but the supervisor did not come back. The claimant was concerned about making production standards and getting her assigned work done before lunch so she got the box herself. The box weighed about 14 pounds. The supervisor reported to management that the claimant had violated her restrictions.

On March 14 the employer decided that the claimant would be placed on a leave of absence until she was released to return work without restrictions due to a concern that the claimant would again exceed her restrictions.

The claimant reopened her claim for unemployment benefits, that she had originally filed in December 2013, effective March 16, 2014.

Except for the weeks listed below, since filing for unemployment insurance benefits in March 2014, the claimant has been able to and available for work with a ten-pound weight restriction since there is no medical document lifting that restriction. She can return to work with the employer by presenting a medical release without restrictions, which she has not done yet. Except for the weeks listed below, the claimant has contacted two employers each week seeking employment within her restrictions.

The claimant was unable or unavailable to work due to medical issues for the majority of the following weeks: Weeks ending March 22, April 19, April 26, May 3, May 17, May 24, May 31, June 7, June 14, and June 21. The claimant has been able to and available for work with the ten-pound weight restriction since June 22.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides for a disqualification for claimants who voluntarily quit employment without good cause attributable to the employer or who are discharged for work-connected misconduct. Iowa Code §§ 96.5-1 and 96.5-2-a. Both the claimant and the employer's position is that the claimant has not quit and has not been discharged from employment.

This is like Wills v. Employment Appeal Board, 447 N.W.2d 137 (Iowa 1989), in which the Supreme Court considered the case of a pregnant CNA who went to her employer with a physician's release that limited her to lifting no more than 25 pounds. Wills filed a claim for benefits after the employer did not let her return to work because of its policy of not providing light-duty work for non-work injuries. The Supreme Court ruled that Wills became unemployed involuntarily and was able to work because the weight restriction did not preclude her from performing other jobs available in the labor market.

The next issue is whether the claimant was able to and available for work as required by Iowa Code § 96-4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires lifting of over ten pounds. There is work available in the labor market meeting such restrictions and the claimant has shown she was available for that work except for the weeks mentioned below.

The rules further provide that a claimant is considered unavailable for work if the claimant requested and was granted a leave of absence, since the period is deemed a period of voluntary unemployment. 871 IAC 23(10). In this case, however, the claimant did not request the leave of absence, the employer placed her on leave so she cannot be considered to have been voluntarily unemployed.

In addition, the rules provide that if a claimant is available for a major part of a workweek, she is considered available for work. 871 IAC 24.22(2)h. The claimant was unable or unavailable to work due to medical issues for the majority of the following weeks: Weeks ending March 22, April 19, April 26, May 3, May 17, May 24, May 31, June 7, June 14, and June 21. The claimant has been able to and available for work with the ten-pound weight restriction since June 22.

The claimant is advised that she would not be eligible for benefits for any weeks in the future in which she is not available for the majority of the workweek under the rules.

DECISION:

The unemployment insurance decision dated April 2, 2014, reference 02, is modified in favor of the claimant. The claimant is generally eligible for benefits effective March 16, 2014, with the following exceptions; the claimant was unable or unavailable to work due to medical issues for the majority of the following weeks: Weeks ending March 22, April 19, April 26, May 3, May 17, May 24, May 31, June 7, June 14, and June 21. She is denied for those weeks.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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