

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

A'LIYAH W BEKISH
Claimant

APPEAL NO. 16A-UI-13278-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOSAIC
Employer

OC: 04/03/16
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able and Available for Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated December 8, 2016, reference 03, which held the claimant eligible to receive unemployment insurance benefits beginning November 20, 2016 finding that the claimant was considered to be able and available for work and still employed by the employer on a short-term layoff. After due notice was provided, a telephone hearing was held on January 5, 2017. Claimant participated. The employer by Ms. Michelle Hawkins, Hearing Representative, and witnesses Ms. Nicki Streed, Human Resource Generalist, and Mr. Parker Conover, Program Coordinator.

ISSUE:

The issue is whether the claimant is able and available for work within the meaning of the Iowa Employment Security Act.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: A'Liyah Bekish began employment with Mosaic on November 8, 2016. The claimant was hired to work as a full-time direct support person working in group homes with individuals physical and/or intellectual disabilities. The claimant was paid by the hour. Her immediate supervisor was Jessica Hotchkiss.

In September 2016, Ms. Bekish presented a doctor's note to her employer limiting the claimant's work activities and restricting the claimant's lifting. Although the medical issue with the claimant's right arm had not been determined to be work-related, Mosaic nevertheless, accommodated Ms. Bekish by assigning her to a different group home on October 2, 2016. The physical requirements at that location were less demanding and the employer accommodated the claimant's medical restrictions. Later, at the employer's request, the claimant went back to her doctor to have a previous limitation on her "pushing and pulling" removed. The claimant presented a revised doctor's note to the employer on November 17, 2016.

Because the revised doctor's statement had increased the claimant's lifting restrictions, now allowing her to lift only 10 pounds, the employer called a meeting with the claimant to determine whether the employer could continue to accommodate Ms. Bekish' further restrictions. During the

meeting, Ms. Bekish indicated that the limitation had been changed by the doctor inadvertently and that she would attempt to provide a revised doctor's statement that was accurate to the employer. Ms. Bekish contacted her doctor and believed her doctor had sent a revised doctor's statement to the employer changing the lifting limitation back to 15 pounds. The employer had also made an attempt to obtain a revised doctor's statement, and Ms. Bekish' doctor again listed the claimant's lifting restriction to be 10 pounds (instead of the 15 pounds the claimant had initially provided to the employer).

Because the employer believed that the claimant's lifting limitation had now been reduced to 10 pounds, the employer was unable to accommodate Ms. Bekish at the site where she has most recently been assigned, but offered to accommodate the claimant by sending her to a yet different group home where less lifting was required, on a p.m. shift. The claimant was willing to accept the evening assignment and left a message to that effect on the employer's answering machine. The claimant's message was later received by the employer when Ms. Streed returned from an absence, however no further contact was established between the parties. The employer had made a unilateral decision to place the claimant in a leave of absence status in hopes that the claimant would later return to work when the employer had a position available that would accommodate the claimant's restrictions or the claimant's restrictions were less.

REASONING AND CONCLUSIONS OF LAW:

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".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code Section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements.

To satisfy the ableness requirement, 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. 871 IAC 24.22(1). With regard to illness, injury, or pregnancy, each case is decided upon an individual basis recognizing that various work opportunities present different physical requirements. 871 IAC 24.22(1)a. A statement from a medical practitioner is considered to be prima facie evidence of physical ability of the individual to perform the work required, that is, the statement is legally sufficient to establish the claimant's physical ability unless disproved by other evidence.

To satisfy the availability requirement, an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse. The individual must be genuinely attached to the labor market. Since under unemployment insurance law, it is the

availability of the individual that is required to be tested, the labor market must be described by the terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographic area in which the individual offers the service.

In the case at hand, the employer had accommodated Ms. Bekish allowing her to work at an alternative group home with a doctor's lifting restriction of 15 pounds. Later when the claimant went to have her initial doctor's limitation modified at the employer's request, her doctor inadvertently made another aspect of the restriction, the lifting limitation, greater. Through factors that were largely not the fault of the claimant or the employer, correct medical information was not made available to resolve what appeared to be a greater lifting limitation. The employer elected to keep Ms. Bekish on their employment rolls, but would not allow the claimant to continue working until further medical documentation was received. The employer chose to unilaterally categorize the claimant as being on a leave of absence.

The administrative law judge concludes that in view of the employer's unilateral implementation of the leave of absence status, without the claimant's consent, the claimant's status is more correctly categorized as a short-term layoff by the employer. Benefits are allowed provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated December 8, 2016, reference 03, allowing benefits beginning November 20, 2016 finding the claimant was able and available for work and on a short-term layoff is affirmed.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs