

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA J SHAFFER
Claimant

HOBBY LOBBY STORES INC
Employer

APPEAL 17A-UI-06288-DB
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 05/14/17
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able to and Available for Work
Iowa Admin. Code r. 871-24.23(10) – Voluntary leave of absence

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the June 15, 2017 (reference 01) unemployment insurance decision that found claimant was ineligible for unemployment benefits because she requested and was granted a leave of absence. The parties were properly notified of the hearing. An in-person hearing was held on July 25, 2017 in Des Moines, Iowa. The claimant, Melissa J. Shaffer, participated personally and was represented by Attorney Philip F. Miller. The employer did not participate. Claimant's Exhibits A – F were admitted without objection.

ISSUE:

Is the claimant able to work and available for work effective May 14, 2017?
Did the claimant request and was claimant granted a voluntary leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant is employed full-time as a cashier. Her job duties include customer service, running a cash register, restocking shelves, unloading merchandise from trucks, and constructing layouts. Claimant typically worked approximately 35 hours per week. Claimant's immediate supervisor is Brian White. Claimant sustained a back injury at work on December 30, 2015 when she slipped and fell. Claimant filed a worker's compensation claim and her case is still pending.

During the course of her recovery from the injury to her back, claimant received several different working restrictions from her physicians. She received her most recent working restrictions from her physician in February of 2017. Those work restrictions stated that claimant could lift up to 25 pounds daily, could lift up to 35 pounds occasionally and rarely/never should she lift more than fifty pounds.

Claimant's last day that she physically worked for this employer was on August 2, 2016, but she remains employed to date. After August 2, 2016, claimant was instructed that she was not allowed to continue working due to the restrictions she had in place at that time. Claimant never requested a leave of absence regarding her back injury.

Claimant met with Mr. Whitte on May 3, 2017 about returning to work. Mr. Whitte advised that he needed to speak to the risk management department and would get back in touch with her. Claimant told Mr. Whitte during this meeting that there were many jobs she was able to do at work that were within her current restrictions. Claimant has not heard back from the employer about returning to work. Prior to this employment claimant has worked as a server and has been a commercial and residential cleaner in the past. Claimant has been actively and earnestly seeking work since May 14, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective May 14, 2017.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

To be 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); Iowa Admin. Code r. 871-24.22(1). Claimant has established that she is able to and available to work. She never requested a voluntary leave of absence for her back injury. She has established that there are several jobs that she can do that fit within her work restrictions of occasionally lifting 35 or more pounds and rarely/never lifting more than fifty pounds. She has also established that she has been available to work and has been earnestly and actively seeking work. Benefits are allowed.

DECISION:

The June 15, 2017 (reference 01) unemployment insurance decision is reversed. The claimant is able to and available for work effective May 14, 2017. Benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs