

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONYA D CARROLL
Claimant

APPEAL NO: 13A-UI-03881-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WELLS FARGO BANK NA
Employer

OC: 02/24/13
Claimant: Appellant (2/R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Tonya Carroll (claimant) appealed a representative's March 21, 2013 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was unable to work with Wells Fargo Bank (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 6, 2013. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from July 16, 2012, to January 15, 2013. The claimant has chemically induced asthma which was triggered when her co-workers sprayed cologne around her. She became ill, reported it to the employer, and could not work. The claimant's physician restricted her from working for two weeks. The doctor released her to return to work without restrictions on or about January 10, 2013. The employer told workers not to spray cologne at work. The claimant returned to work on January 10, 2013. Co-workers sprayed cologne around her on January 15, 2013, and the claimant had to leave work. The employer required the claimant to apply for disability for which the claimant did not qualify. The claimant did not return to work.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is able and available for work.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was released to return to work without restrictions by her physician. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The representative's March 21, 2013 decision (reference 01) is reversed. The claimant is qualified to receive unemployment insurance benefits because she is available for work with the employer. The issue of the claimant's separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs