

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RANDI L SWINK
Claimant

APPEAL NO. 15A-UI-09019-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRAL IOWA HOSPITAL CORP
Employer

OC: 07/12/15
Claimant: Appellant (5)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Randi Swink filed a timely appeal from the August 4, 2015, reference 02, decision that denied benefits effective July 12, 2015, based on an Agency conclusion that Ms. Swink was unable to perform work and, therefore, did not meet the work availability requirement. After due notice was issued, a hearing was held on August 31, 2015. Ms. Swink participated. Kendra Steuhm, Human Resources Business Partner, represented the employer. The hearing record was left open for the limited purpose of allowing Ms. Swink to submit medical documentation containing her work ability and availability. Ms. Swink submitted documentation which documentation was received into the record as Exhibits A through K. The administrative law judge forwarded the exhibits to the employer and communicated an updated September 11, 2015 deadline for the employer's response, if any, to the materials. The employer did not submit a response to the materials.

ISSUES:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Central Iowa Hospital Corporation is Ms. Swink's most recent employer and the sole base period employer. Ms. Swink most recently performed work for the employer in July 2014. The employment was full-time. Ms. Swink most recently performed work for the employer as a Patient Access Associate. Before that, Ms. Swink had performed nursing assistant duties. At the time Ms. Swink went off work in July 2014, she did so due to a non-work-related medical condition involving two inner ear disorders. About seven years ago, Ms. Swink was diagnosed with Meniere's Disease. In the summer of 2014, Ms. Swink's condition worsened and she was diagnosed with Vestibular Migraines. Ms. Swink's physician, Matthew Carfrae, M.D., describes the conditions as follows:

Vestibular Migraines and disturbances of balance are characterized by an hallucination of motion or loss of position sense, and sensation of dizziness which may be constant or

episodic in paroxysmal [that is, a severe attack or a sudden increase in intensity of a disease, usually recurring periodically] attacks. Nausea, vomiting, ataxia [that is, loss of control of body movements], and incapacitation are frequently observed particularly during the acute attack. Remissions are unpredictable and irregular, but may be long lasting. Meniere's Disease can include tinnitus and fluctuating hearing loss. Symptoms can be very sporadic. The severity of symptoms and frequency of attacks influence recovery time [which] could be days, weeks or months.

See Exhibit K.

In February 2015, Dr. Carfrae completed a Physical Ability Assessment concerning Ms. Swink. See Exhibit F. The Physical Ability Assessment indicated that Ms. Swink could perform the following tasks "constantly," which was defined as 5.5 hours per day: fine manipulation, simple grasp, firm grasp. The assessment indicated that Ms. Swink could perform the following tasks "frequently," which was defined as 2.5 to 5.5 hours per day or 1/3 to 2/3 of the day: sitting, standing, walking, desk-level reaching and seeing. The assessment indicated that Ms. Swink could perform the following tasks "occasionally," which was defined as zero to 2.5 hours or 1/3 of the day: overhead reaching, below waist reaching, lifting and carrying not to exceed 20 pounds, climbing stairs, balancing, stooping, kneeling, crouching, crawling, and hearing.

On July 31, 2015, Ms. Swink participated in a fact-finding interview with a Workforce Development claims deputy. The deputy requested that Ms. Swink submit medical documentation of her ability to perform work. On August 3, 2015, Dr. Carfrae, or his staff, provided Ms. Swink with a note on a prescription form that indicated Ms. Swink's work ability as follows: "O.K. for light office work as tolerated 20-30 Hours per week." It is unclear whether Workforce Development received the August 3 note prior to entering the August 4, 2015, reference 02, decision that denied benefits effective July 12, 2015.

Ms. Swink has provided a new Disability Termination document from Dr. Carfrae, dated September 1, 2015. The document includes the following paragraph:

Restrictions and Severity of Impairment/work related abilities

individual response to treatment also determines length of disability. If surgical intervention is required, additional recovery time may be required. In some instances, the symptoms may continue indefinitely. Individuals with frequent bouts of vertigo may benefit from physical therapy (vestibular) which is helpful to control symptoms by causing brain adaptation. Patients can have difficulty carrying or lifting items more than 10lbs. Stooping, kneeling, crawling, reaching can trigger an episode, or worsen an episode. Sometimes following severe or acute attacks patient may need to rest for several hours. Concentration and pace can also be affected. Intermittent absences may be necessary. Ms. Swink is now taking Zofran which she is finding it extremely helpful. At this time, this week has no restrictions on duties or hours at her place of employment.

Workforce Development records indicate that Ms. Swink has not made any weekly claims for benefits since she established the claim that was effective July 12, 2015. At the time of the appeal hearing, Ms. Swink was unable to provide work search information beyond an assertion that she has contacted Unity Point, the former employer, about open positions and that she has been "trying" to send two resumes per week. Ms. Swink advised that she has been in the process of moving from one residence to another and has been preoccupied with moving her livestock and assisting her father with multiple medical appointments.

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".

Iowa Admin. Code r. 871-24.23(1) and (35) 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.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Iowa Administrative Code section 871 IAC 24.2(1)(e) and (g) provide as follows:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

24.2(1) Section 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

e. In order to maintain continuing eligibility for benefits during any continuous period of unemployment, an individual shall report as directed to do so by an authorized representative of the department. If the individual has moved to another locality, the individual may register and report in person at a workforce development center at the time previously specified for the reporting.

The method of reporting shall be weekly if a voice response continued claim is filed, unless otherwise directed by an authorized representative of the department. An individual who files a voice response continued claim will have the benefit payment automatically deposited weekly in the individual's account at a financial institution or be paid by the mailing of a warrant on a biweekly basis.

In order for an individual to receive payment by direct deposit, the individual must provide the department with the appropriate bank routing code number and a checking or savings account number.

The department retains the ultimate authority to choose the method of reporting and payment.

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

An individual claiming benefits using the weekly voice continued claim system shall personally answer and record such claim on the system unless the individual is disabled and has received prior approval from the department.

The individual shall set forth the following:

- (1) That the individual continues the claim for benefits;
- (2) That except as otherwise indicated, during the period covered by the claim the individual was unemployed, earned no wages and received no benefits, was able to work and available for work;
- (3) That the individual indicates the number of employers contacted for work;
- (4) That the individual knows the law provides penalties for false statements in connection with the claim;
- (5) That the individual has reported any job offer received during the period covered by the claim;
- (6) Other information required by the department.

Ms. Swink's unemployment insurance benefit eligibility is based on a history of full-time employment. The evidence in the record indicates that prior to September 1, 2015, Ms. Swink had not been released by her doctor to return to full-time employment. The August 3, 2015 note specifically indicated that Ms. Swink was released to perform only 20 to 30 hours of work per week and to perform that only as tolerated. Prior to September 1, 2015, Ms. Swink did not meet the work ability requirement and was not eligible for unemployment insurance benefits. Effective September 1, 2015, based on the physician's note, Ms. Swink was able to perform full-time work despite her medical condition.

Ms. Swink has failed to provide sufficient evidence to establish that she has otherwise been available for work within the meaning of the law. She presented grossly insufficient evidence concerning any purported work search. She stated that she had been preoccupied of late with moving and assisting her father with his medical issues. She has yet to make a weekly claim for benefits in connection with the claim that she established in July 2015. The denial of benefits that was effective July 12, 2015 continues at this time. While the work ability issue is deemed resolved effective September 1, 2015, Ms. Swink continues not to meet the work availability requirement, the work search requirement, and the weekly claim reporting requirement.

DECISION:

The August 4, 2015, reference 02, is modified as follows. Prior to September 1, 2015, the claimant was unable to work. Effective September 1, 2015, claimant was able to perform full-time work. The claimant has not met the work availability, work search, or weekly claim reporting requirements since she established her claim for benefits. The availability disqualification that was effective July 12, 2015 continues at this time and will continue until the claimant demonstrates compliance with the availability requirement.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs