

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

TANDITHA R NEDVED
490 ALLEN AVE
GARNER IA 50438

FERTILIZER EQUIPMENT SPECIALIST INC
725 W US HWY 18
GARNER IA 50438-1021

Appeal Number: 04A-UI-11100-CT
OC: 07/25/04 R: 02
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available
Section 96.5(1)d – Separation Due to Illness/Injury

STATEMENT OF THE CASE:

Fertilizer Equipment Specialist, Inc. (FES) filed an appeal from a representative's decision dated October 6, 2004, reference 03, which held that Tanditha Nedved satisfied the availability requirements of the law effective July 25, 2004. After due notice was issued, a hearing was held by telephone on November 8, 2004. Ms. Nedved participated personally and Exhibits A through D were admitted on her behalf. The employer participated by Carey Umbarger, President.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Nedved began working for FES in January 2004, performing general office duties. She was hired to work part time but usually worked full-time hours. On July 22, Ms. Nedved went on a leave of absence to undergo surgery. She anticipated being gone from four to six weeks.

Ms. Nedved was released to return to work effective September 13 and notified the employer that she was able to return to work. Although she had a 25-pound lifting restriction, her normal job duties did not require her to lift more than 25 pounds. Because of the restructuring of office duties in Ms. Nedved's absence, the employer no longer had work available for her when she re-offered her services.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Nedved was separated from employment for any disqualifying reason. She left the employment to take a medical leave of absence which was approved by the employer. Once she was released, she returned and re-offered her services to the employer. Because the employer did not have work available for her, Ms. Nedved is entitled to job insurance benefits pursuant to Iowa Code section 96.5(1)d.

The doctor's release submitted by Ms. Nedved as Exhibit A satisfies the administrative law judge that she is, in fact, able to work. It is concluded, therefore, that she satisfied the availability requirements of Iowa Code section 96.4(3) as of September 12, 2004 when she filed her additional claim for job insurance benefits. The representative's decision allowed benefits as of July 25, 2004, the effective date of her original claim. However, Ms. Nedved had not been released to return to work after her surgery at that point. The decision shall be modified to allow benefits effective September 12, 2004.

DECISION:

The representative's decision dated October 6, 2004, reference 03, is hereby modified as to the effective date of the allowance. Ms. Nedved satisfied the availability requirements of the law when she filed her additional claim. Benefits are allowed effective September 12, 2004, provided she satisfies all other conditions of eligibility.

cfc/b