

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHELLE Y CANEDO
Claimant

**VERMEER MANUFACTURING COMPANY
INC**
Employer

APPEAL 16A-UI-08468-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/10/16
Claimant: Respondent (2R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the July 29, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 22, 2016. The claimant did not register and did not participate. The employer participated through Laura Briggs, human resources. Sharilyn Smith also testified for the employer. Employer exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the claimant able to work and available for work effective July 10, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time at Vermeer Manufacturing Company from 2007 until she went on FMLA on November 16, 2015, for a personal medical condition. The claimant's FMLA expired and she was approved for short-term disability until May 13, 2016. The claimant was unable to return to work and separation occurred. She subsequently filed for long-term disability through this employer, and was approved, with a retroactive date of May 14, 2016 (Employer exhibit 1). The claimant receives monthly long-term disability payments and has been deemed "totally disabled" (Employer exhibit 1) in a July 20, 2016 letter from the carrier to the claimant. There has been no change in the claimant's status since the letter.

The claimant did not attend the hearing or submit a written statement or documentation in lieu of participation.

REASONINGS AND CONCLUSIONS OF LAW:

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

In this case, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law. The claimant is currently on long term disability, and receiving monthly payments, effective May 14, 2016 (Employer exhibit 1) and has been defined as "totally disabled". (Employer exhibit 1). The claimant did not attend the hearing or refute the evidence presented, or present any credible evidence that there has been a change in her status. The claimant is ineligible to receive unemployment insurance benefits.

REMAND:

The overpayment issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The unemployment insurance decision dated July 29, 2016, reference 02, is reversed. The claimant is not eligible to receive unemployment insurance benefits effective July 10, 2016. The issue of overpayment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/pjs