

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREA GONZALEZ
Claimant

APPLE CORPS LP
Employer

APPEAL 17A-UI-03251-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/26/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 13, 2017, (reference 02) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on April 17, 2017. Claimant participated. Employer participated through general manager Troy Essen and human resources representative Lindsay Read. Claimant's Exhibit A was received.

ISSUE:

Is the claimant able to work and available for work effective February 26, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time associate manager at the Davenport, Iowa, restaurant March 7, 2016, through February 23, 2017. Her last day of work was January 22, 2017. Claimant injured her ankle at home on January 22, 2017. She has not worked since then. She promptly informed manager Amber that she had broken her ankle and while at the emergency room she texted Essen. Later she told him she had an appointment with an orthopedist who diagnosed an evulsion fracture. She was medically excused from work two weeks until her next appointment. She advised Essen by phone and provided medical documentation when her mother drove her to the restaurant to drop it off. Essen said he did not need it and then a couple of days later, he told he did need it and had a disability packet for her to complete. On February 8, 2017, at the follow-up appointment claimant was placed in a walking boot with crutches and had more testing. She told Essen it would be another two weeks until the next appointment and provided the medical excuse to him or the home office. Her next appointment was February 21. On February 22 claimant advised Essen that her approximate return date would be March 13, 2017, and she mailed the disability packet and excuse to Read at the home office. Because claimant was still unsure about a return to work date and it could be longer than two weeks, the decision was made to terminate the employment because of a management staffing shortage difficulty. Regional manager Eric Peluso termed her by phone and followed up by e-mail. (Claimant's Exhibit A) At no point did the employer make a demand that claimant

return to work by a date certain. The employer has advised her she may reapply for work upon her full release without restriction.

Claimant was eligible for up to 11 weeks' short-term disability that began February 6 and ended on April 3, 2017. She received the last check on February 20. Because she had not worked with the employer for a year, she was not eligible for Family and Medical Leave Act (FMLA) leave. At the medical appointment on March 13, she was instructed not to put weight on that leg and was not given a release to work, with or without restrictions. Her next appointment on April 6 resulted in her being allowed to walk in the boot without crutches, but she cannot put much weight on her heel. Again there was no release, with or without restrictions. Her next medical appointment is May 1. Claimant has self-assessed she can perform sedentary work and has a work history in a call center and as an administrative assistant.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not medically able to work.

Iowa Code section 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. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) *Able to work.* An 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.

a. *Illness, injury or pregnancy.* Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

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

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

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. Emp't Appeal Bd.*, 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). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Iowa Code section 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Inasmuch as the claimant has not been medically released to work, benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given any medical restrictions, even if it not the job duties she most recently performed.

DECISION:

The March 13, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant did not quit but was discharged for no disqualifying reason. Claimant is not able to and available for work effective February 26, 2017. Benefits are withheld until such time as she obtains a medical release to return to some type of work for which she is qualified given her education, training, and work history. That release should be provided to the closest Workforce Development office for review of her ability to work.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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