

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MONA MERICAL
Claimant

WELLS FARGO BANK NA
Employer

APPEAL 20A-UI-01590-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/12/20
Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On February 20, 2020, Mona Merical (claimant) filed an appeal from the February 18, 2020 (reference 02) unemployment insurance decision that found she was not eligible for benefits due to not meeting the availability requirements of the law. Benefits were denied as of January 12, 2020.

A telephone hearing was held on March 10, 2020. The parties were properly notified of the hearing. The claimant participated personally and was represented by Attorney Marlon Mormann. Wells Fargo Bank NA (employer) did not register a number for the hearing and did not participate.

Claimant's Exhibit 1 was admitted.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time bankruptcy specialist 1. Claimant's first day of employment was September 19, 2013. The last day claimant worked on the job was April 18, 2019. Claimant separated from employment on February 25, 2020.

Claimant was medically restricted from returning to employment in her specific department beginning April 18, 2019, as her employment in that department was exacerbating her medical conditions. Claimant was medically released to return to work in another department beginning December 27, 2019. See Exhibit 1. However, employer refused to accommodate her by moving her to another department.

Claimant has significant experience in the banking industry and in customer service-related jobs and is qualified for positions of that nature. Claimant has been searching for work for which she is qualified.

The issue of separation has not yet been the subject of a fact-finding hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the February 18, 2020 (reference 02) unemployment insurance decision is REVERSED. The administrative law judge concludes that the claimant is able to work and available for work effective January 12, 2020. The issue of separation is REMANDED to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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.

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. Employment Appeal Board*, 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as the illness is considered work-related for the purposes of unemployment insurance benefits only and the treating physician released the claimant to return to work with restrictions, the claimant has established her ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

Since the employment ended on February 25, 2020, claimant's ability to work at that point is not measured by the job she held most recently, but by standards of her education, training, and work history. Claimant has significant experience in the banking industry and in customer-service related jobs and is qualified for positions of that nature. Claimant has been searching for work for which she is qualified.

DECISION:

The February 18, 2020 (reference 02) unemployment insurance decision is REVERSED. The administrative law judge concludes that the claimant is able to work and available for work effective January 12, 2020.

REMAND:

The issue of separation is REMANDED to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Andrew B. Duffelmeyer
Administrative Law Judge
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Decision Dated and Mailed

abd/rvs