

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA M LECHUGA
Claimant

DES MOINES IND COMMUNITY SCH DIST
Employer

APPEAL NO. 19A-UI-03933-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/14/19
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 6, 2019 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on July 2, 2019. Claimant participated personally. Employer participated by Lashone Mosley, Rhonda Wagoner and Catherine McKay. Employer's Exhibits 1-3 and Claimant's Exhibits A-B were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a bus driver for employer. Claimant became a full-time lead driver on December of 2017. An essential duty of the lead driver position was to train other incoming drivers as to the specific actions and requirements of route drivers. Claimant, although she wished to have the increased pay of being a full time lead driver, was not happy with the potential anxiety of training other drivers.

In May of 2018, claimant expressed to employer that she did not wish to train other drivers. In October of 2018, employer met with claimant and offered the claimant the position of being a full-time non-lead driver. Claimant did not accept this offer and continued to be a lead driver. Other parties filled the roles of full time non-lead drivers after claimant decided not to take the offered position.

Claimant stated that the one day she trained another driver on the road in October or early November, 2018, she had great anxiety as the new driver she was training nearly got into an accident. Claimant then went to her physician in November, 2018 and mentioned her anxiety and stress when training new drivers. The Nurse Practitioner stated that claimant told her she had anxiety when teaching drivers while the bus is moving. She further stated that claimant "would prefer" not to have to orient new drivers to the expectations of bus driving. There was no medical restriction offered by the doctor.

Claimant forwarded this November 19, 2018 doctor's note to employer. The same note was forwarded again twice in January, 2019. Employer agreed in February, 2019 to place claimant on FMLA based on this letter. During this time claimant applied for and was denied disability. Claimant's FMLA expired on May 14, 2019. At that time there were no full-time driver positions that were not lead drivers. Employer notified claimant that they needed a statement from the physician releasing claimant to return to work. Additionally, employer notified claimant if she did not return to work, her position could be filled by another.

Claimant did not send any medical documentation to employer and did not return to work.

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. 871-24.22(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 physician and has not been released as being able to work.

The claimant in this matter was given the opportunity to not continue in the full-time lead driver position prior to beginning to teach other drivers. Claimant declined this offer. She chose to continue as a lead driver, but desired to not perform an essential function of the position. Claimant's physician's letter speaks only of claimant's preferences, and not of a medical necessity to not perform her duties. In work, most people would prefer not to perform some of the tasks required. Claimant has not shown that her condition created a medical necessity that she not perform the training duties of her job. Inasmuch as the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The decision of the representative dated May 6, 2019, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective April 14, 2019.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn