

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JOHNELL M FLOMO
Claimant

APPEAL NO. 10A-UI-10918-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 06/20/10
Claimant: Appellant (2)

Section 96.4-3 – Eligibility for Benefits

STATEMENT OF THE CASE:

Johnell M. Flomo filed a timely appeal from an unemployment insurance decision dated July 29, 2010, reference 01, that denied unemployment insurance benefits to her effective June 20, 2010 upon a finding that she was medically unable to work. After due notice was issued, a telephone hearing was held September 20, 2010 with Ms. Flomo participating. Exhibit A was admitted into evidence on her behalf. Lynn Corbeil, Attorney at Law, appeared on behalf of the employer, Care Initiatives. Human Resources Manager Dave Mollenhoff testified. Employer Exhibits One and Two were admitted into evidence.

ISSUE:

Is the claimant medically able to work?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Johnell M. Flomo is an employee of Care Initiatives. She has not performed services for the company since late May. Ms. Flomo is pregnant, and her physician imposed a 25-lb. lifting restriction on her. The employer could not honor the restriction.

The employer made a good faith effort to inform the claimant that her job was protected, that she could return to work when the lifting restriction was removed. Ms. Flomo did not understand this. On August 2, 2010, Ms. Flomo's physician removed the lifting restriction. Ms. Flomo provided that information to the agency, but she did not provide it to Care Initiatives, in the mistaken belief that her employment had ended. The employer remains willing to put Ms. Flomo back on the schedule based upon the release of the lifting restriction.

REASONING AND CONCLUSIONS OF LAW:

Since there has been no permanent separation from employment, the only question before the administrative law judge is whether the claimant meets the eligibility requirement of being

medically able to work. The administrative law judge concludes that she meets that requirement as of the week of August 1, 2010.

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".

The critical piece of evidence in this record is Exhibit A, the statement of Ms. Flomo's physician dated Monday, August 2, 2010. This statement establishes that Ms. Flomo is medically able to work in her primary occupation.

The employer argues implicitly that benefits should be denied because Ms. Flomo was on a leave of absence. Had Ms. Flomo understood that the employer was protecting her job through a leave of absence due to the pregnancy, the administrative law judge would have accepted the employer's argument. However, it is clear from the record in this case that Ms. Flomo did not comprehend that she could have returned to work in August if she had then provided Exhibit A to the employer. The administrative law judge concludes that a leave of absence denial is not appropriate when the employee does not realize that she is on a leave of absence.

DECISION:

The unemployment insurance decision dated July 29, 2010, reference 01, is modified. Benefits are withheld from June 20, 2010 through July 31, 2010. The claimant is entitled to receive unemployment insurance benefits effective August 1, 2010, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs