

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAWN E PIERRON

Claimant

APPEAL NO. 07A-UI-09508-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FEDEX KINKO'S OFFICE AND PRINT
SERVICES INC**

Employer

**OC: 06/24/07 R: 02
Claimant: Appellant (1)**

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Dawn Pierron filed a timely appeal from the October 2, 2007, reference 02, decision that denied benefits effective June 24, 2007, and that concluded Ms. Pierron was not able to work and available for work. After due notice was issued, a hearing was held on October 23, 2007. Ms. Pierron participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the documents generated and/or submitted in connection with the fact-finding interview and the decision entered on August 23, 2007 in Appeal Number 07A-UI-07428-DWT. Exhibits A and were received into evidence.

ISSUE:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Dawn Pierron separated from her employment with Fedex Kinko's Office and Print Services on June 25, 2007 and established a claim for unemployment insurance benefits that was effective June 24, 2007. Ms. Pierron had worked for the employer since November 1, 2002 and had been a full-time senior project coordinator at the time she commenced an approved leave of absence on March 1, 2007. Ms. Pierron has a history of major depressive disorder with psychosis and has undergone electroconvulsive therapy (ECT) as part of her treatment for depression. Ms. Pierron commenced the approved medical leave of absence on March 1, 2007 so that she could undergo ECT. This was the fourth time Ms. Pierron had undergone ECT. The course of treatment included hospitalization. Ms. Pierron's doctor released her to return to the employment on June 4, 2007, without any work restrictions. When Ms. Pierron returned to work, she did so in the position of Senior Retail Consultant. Ms. Pierron's new duties included greeting customers and directing them to the department they needed. Ms. Pierron suffers from severe hearing loss and could not hear what customers were saying to her. The situation was upsetting to Ms. Pierron and resulted in Ms. Pierron leaving work early on June 4. Ms. Pierron's

partner contacted the employer and reported that Ms. Pierron was having a hard time emotionally and could not work. On or about June 15, Ms. Pierron indicated that she had gone back to work too soon. Ms. Pierron's doctor completed paperwork as part of Ms. Pierron's request to take a medical leave of absence. The request indicated that Ms. Pierron needed to take an indefinite leave of absence. The paperwork was submitted to the employer on June 15, 2007. On June 25, the employer denied the request for an indefinite leave of absence and discharged Ms. Pierron from the employment. In a decision entered August 23, 2007, Administrative Law Judge Debra Wise ruled that Ms. Pierron was discharged for no disqualifying reason and remanded the matter for determination of whether Ms. Pierron was able to work and available for work. See Appeal Number 07A-UI-07428-DWT.

On September 13, 2007, a Workforce Development representative sent Ms. Pierron a Request for Medical Report, which Ms. Pierron forwarded to her psychiatrist. The completed Request for Medical Report was received by Iowa Workforce Development on September 25, 2007. Ms. Pierron's psychiatrist indicated in the document that Ms. Pierron was diagnosed with "major depressive disorder recurrent with psychosis." The psychiatrist indicated that Ms. Pierron suffered from "depressed mood, poor concentration, inattentive, despondent." The psychiatrist indicated that Ms. Pierron had been unable to perform her occupation during the period of May 1, 2007 to June 1, 2007 and that Ms. Pierron had last been treated for her mental health condition on September 25, 2007. The information provided by the psychiatrist was less than clear as to whether Ms. Pierron had been released to return to any work, but indicated that Ms. Pierron's mental health restrictions prevented her from being able to return to her prior occupation. Ms. Pierron's mental health status remains unchanged.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 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.

871 IAC 24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Workforce Development rule 871 IAC 24.23 provides, in relevant part, as follows:

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

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

24.23(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.

The greater weight of the evidence indicates that since Ms. Pierron established her claim for benefits, Ms. Pierron has continued under the care of a medical practitioner for treatment of significant mental illness. The weight of the evidence fails to indicate that Ms. Pierron has been released to return to work or that Ms. Pierron is mentally able to engage in gainful employment. The administrative law judge notes that the most recent information regarding Ms. Pierron's mental health status is contained in the Request for Medical Report document submitted to the Workforce Advisor on September 25, 2007. Though that document prompted a denial of benefits, Ms. Pierron presented no more recent documentation for the appeal hearing. Instead, Ms. Pierron presented the release that allowed her to return to work on June 1. The greater weight of the evidence indicates that after the June 1 release, Ms. Pierron's mental health condition continued to negatively impact her ability to work and prompted her separation from her most recent employment. Thus, the June 1 release is of limited value in determining Ms. Pierron's ability to work since she established her claim for benefits.

Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Pierron has not met the work ability and availability requirements of Iowa Code section 96.4(3) since she established her claim for benefits. Accordingly, benefits are denied effective June 24, 2007. If Ms. Pierron's mental health condition improves, she should present documentation of the improvement to her local Workforce Development office so that her ability to work, availability for work, and eligibility for future benefits can be reevaluated.

DECISION:

The Agency representative's October 2, 2007, reference 02, is affirmed. The claimant has not been able to work and available for work since establishing her claim for benefits. Accordingly, the claimant is ineligible for benefits effective June 24, 2007.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs