

Freedom of Information request 1994/2013

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Information request and DWP response

If, as a result of a WCA, such claimants are found to have LCW and summoned to attend work focused interviews is the DWP advisor obliged to accept the claimant's employers position that the claimant is doing everything expected of them to maximise their chances of returning to work?

Employment and Support Allowance Work Related Activity Group claimants are required to attend and participate in mandatory interviews and take part in work related activity, which must be reasonable to the individual's circumstances, to support a future return to employment.

If, as a result of a WCA, such claimants are found not to have any LCW but their employer refuses to allow them to return to work as their Occupational Health Experts have advised that the person remains too ill to return to work what are they expected to live on? As they are still employed they are unable to claim JSA.

Entitlement to Jobseeker's Allowance depends on the claimant being both actively seeking and available for work. Additionally, the claimant must not be in remunerative work. This is defined as work being carried out in excess of 16 hours a week.

In the situation you describe, although the claimant continues to have a contract of employment, he or she is not actually engaged in work. It is therefore likely that a Decision Maker would not decide that the claimant was not entitled to Jobseeker's Allowance on those grounds.

However, the requirement to be actively seeking and available for employment would mean that that the claimant would need to demonstrate that these conditions were satisfied. This would mean that the claimant would need to be prepared to give up the original employment if a new opportunity arose.

Entitlement to benefits is decided by a Decision Maker and each case is decided on its merits. It is therefore not possible to give anything other than the general rules where the question is not about a specific case.

An alternate approach in this situation is for the existing employer to consider reasonable adjustments under the Disability Discrimination Act 1995. Examples of reasonable adjustments could include the supply of a piece of specialist equipment, an alteration to premises to ease access, a change in working hours, or the allocation of some duties to another worker.