

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOLLY M DEFORD**  
Claimant

**APPEAL NO. 11A-UI-14970-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WENGER TRUCK LINES INC**  
Employer

**OC:10/09/11**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated November 9, 2011, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 9, 2012. Claimant participated. The claimant was represented by Michael Hines, Attorney at Law. Employer participated by Ryle Roseke, Safety Manager, and Robert Murray, Owner. The record consists of the testimony of Dolly Deford; the testimony of Ryle Roseke; the testimony of Robert Murray; and Claimant's Exhibits A-D.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was hired as a truck driver in 2004. The claimant worked as a truck driver until May 22, 2009, when she sustained a work-related injury. The claimant eventually underwent back surgery. She has permanent work restrictions, which include no lifting over 25 pounds; no bending or twisting of the back; restricted climbing and squatting; and alternate sitting and standing. (Exhibit A) The claimant's permanent restrictions preclude her from returning to work as a truck driver.

The employer offered the claimant a light-duty job, which required her to work in the office two days a week from 8:00 a.m. to 1:00 p.m. and work at home, on call, three days a week. The claimant could not tolerate the work in the office and frequently asked to go home early because she was in pain and needed to lie down. The claimant was able to do work at home but could not return to work at the office. She is still an employee of the employer but she has not worked since August 14, 2011.

The claimant is a high school graduate and worked as a truck driver since 1997. She has sold cars and worked as a maid. The claimant has no formal computer training although she is familiar with software such as Microsoft Office. She does not believe she could work as a maid

but perhaps she could sell cars. She has applied for jobs at Wal-Mart and Home Depot but she does not know what work she could do there since she must alternate between sitting and standing.

**REASONING AND CONCLUSIONS OF LAW:**

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 24.23(16) provides:

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

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

The claimant has the burden of proof to show that she is able and available for work. The testimony from the claimant established that the only work she is capable of tolerating physically at this time is working from home. The employer offered the claimant a light-duty job that fully complied with her physical restrictions and the claimant was unable to perform the job. She was required to come into the office two days a week for five hours a day. She testified that she could not do this because of back and hip pain. She would leave early because she was in pain and needed to lie down.

The claimant was asked what type of work she thought she could do and her answers were quite vague. She said that she has applied at Home Depot and Wal-Mart but she did not specify what she thought she could physically tolerate. For example, when asked if she could do a job that required her to stand she was unable to say that she could do the job. The claimant would like to have a job where she could stay home all the time and she is unable and unwilling to work the two days in the office for the employer. Based on the claimant's testimony, the administrative law judge concludes that the claimant is not able and available to work and is therefore disqualified from receiving benefits. The claimant cannot physically tolerate working anywhere but at home and is unwilling to come to the office of the employer, where work would be available for her.

**DECISION:**

The decision of the representative dated November 9, 2011, reference 01, is affirmed. The claimant is disqualified from receiving benefits because she is neither able nor available for work as of October 9, 2011.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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