

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOAN M OLSON
Claimant

GENERAL MACHINE WORKS COMPANY
Employer

APPEAL 21A-UI-24326-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/19/21
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Joan M. Olson, filed an appeal from the October 25, 2021, (reference 01) unemployment insurance decision that denied benefits based upon the determination that claimant was not able to and available for work due to injury effective September 26, 2021. The parties were properly notified of the hearing. A telephone hearing was held on December 28, 2021. The claimant participated personally. The employer, General Machine Works Company, participated through Margie Killmer. The administrative law judge took official notice of the administrative record.

ISSUE:

Is claimant able to and available for work effective September 26, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment with this employer as a full-time machine operator on May 24, 2017. She remains employed with this employer in that capacity as of the date of her unemployment appeal hearing.

Around the week of September 19, 2021, claimant broke her hand in a non-work-related incident. She was unable to perform the functions of her position as a machine operator. Initially, the employer offered her office work while she healed, but she finished that office work quickly. No other work was available for claimant, other than her regular job duties. Thereafter, claimant was off work through the week ending October 16, 2021. She did not receive wages or PTO during the period from September 26, 2021, through October 16, 2021.

On approximately October 17 or 18, 2021, claimant returned to work at her same hours, wages, and duties as prior to the injury. Her doctor released her to return to work without restrictions at that time.

Claimant filed a claim for unemployment insurance benefits with an effective date of September 19, 2021. She filed weekly continuing claims through the week ending October 16, 2021. She properly reported wages in the first week, and no wages for the remaining weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective September 26, 2021.

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".

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.

To be able to work, "[a]n 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." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871—24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Emp't Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to

provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as the medical condition was not work-related but the employer allowed claimant to work in light duty assignments for a period of time, but then did not have light duty work available, claimant has established her ability to and availability for work.

DECISION:

The October 25, 2021, (reference 01) unemployment insurance decision is reversed. The claimant is able to work and available for work effective September 26, 2021. Benefits are allowed, provided she is otherwise eligible.



Alexis D. Rowe
Administrative Law Judge

January 25, 2022
Decision Dated and Mailed

ar/kmj