

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANITA B FARMER
Claimant

WHIRLPOOL CORPORATION
Employer

APPEAL 21A-UI-22602-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/21/21
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Janita B Farmer, the claimant/appellant, filed an appeal from the October 8, 2021, (reference 07) unemployment insurance decision that denied benefits as of August 29, 2021. The parties were properly notified about the hearing. A telephone hearing was held on December 3, 2021. Ms. Farmer participated and testified. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record.

ISSUES:

Is Ms. Farmer able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Farmer began working for the employer on March 11, 2020. She worked as a full-time assembler. Her last day working was April 15, 2021.

Ms. Farmer was diagnosed with pneumonia in April 2021. She stopped attending working due to her diagnosis. As of August 29, Ms. Farmer continued to have side effects from her pneumonia diagnosis and she was still not working. Ms. Farmer attended a doctor's appointment on September 21 at which time Ms. Farmer's doctor did not tell her whether she could return to work. On September 28, Ms. Farmer received a letter from her doctor telling her that she could return to work with no restrictions as of that day. On October 19, Ms. Farmer's doctor sent her a second letter telling her she could return to work without restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows Ms. Farmer is able to work as of September 28, 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.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefit 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.

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. Employment Appeal Board*, 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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Ms. Farmer is not able to and available for work from August 29, 2021, through September 27, 2021. Ms. Farmer's doctor advised her to not work during this time period. Ms. Farmer's doctor released her to return to work as of September 28, 2021. Ms. Farmer is able to work as of September 28, 2021. Benefits are denied from August 29, 2021 through September 27, 2021. Benefits are allowed as of September 28, 2021.

DECISION:

The October 8, 2021, (reference 07) unemployment insurance decision is modified in favor of the appellant, Ms. Farmer. Ms. Farmer is not able to work from June August 29, 2021 through September 27, 2021. Benefits are denied during this time period.

Ms. Farmer is able to work as of September 28, 2021. Benefits are allowed as of September 28, 2021, provided Ms. Farmer is otherwise eligible.



Daniel Zeno
Administrative Law Judge
Iowa Workforce Development
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

January 7, 2022
Decision Dated and Mailed

dz/mh