

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CYNTHIA P GASSMANN**  
Claimant

**APPEAL NO. 15A-UI-01951-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 01/11/15**  
**Claimant: Appellant (2/R)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Cynthia Gassmann filed a timely appeal from the February 10, 2015, reference 01, decision that denied benefits effective January 11, 2015, based on an Agency conclusion that Ms. Gassmann was unable to work due to injury. After due notice was issued, a hearing was held on March 13, 2015. Ms. Gassmann participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate aside from submitted a proposed exhibit. Exhibits One, A, and B were received into evidence. The administrative law judge took official notice of the fact-finding interview materials.

**ISSUES:**

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: Cynthia Gassmann established a claim for benefits that was effective January 11, 2015. Ms. Gassmann was most recently employed as a full-time assistant dietary manager for Care Initiatives at Lantern Park Nursing & Rehab Center in Coralville. Ms. Gassmann last performed work for the employer on October 15, 2014. On that day, Ms. Gassmann fractured her right wrist on a farm gate at home. Ms. Gassmann was initially evaluated at the Mercy Hospital Emergency Room in Iowa City. Ms. Gassmann was fitted with a splint and sling. Ms. Gassmann notified the employer of her injury on her way home from the Emergency Room. The next day, Ms. Gassmann had her first appointment with an orthopedic surgeon, Dr. Corey Christianson. Dr. Christianson took Ms. Gassmann off work. Ms. Gassmann applied for and the employer approved FMLA leave not to exceed 12 weeks.

On January 6, 2015, Dr. Christianson released Ms. Gassmann to perform work that did not require her to lift more than 10 pounds with her right hand or more than 25 pounds with both hands. Ms. Christianson had to wear a splint, to keep her wrist immobilized. The splint did not immobilize her fingers or arm. The splint was made of a hard material and attached to her arm with Velcro fasteners. The splint went about half way up Ms. Gassmann's forearm.

Ms. Gassmann could get the splint wet. Ms. Gassmann contacted the employer to indicate that she had been released to return to work with only the lifting restrictions. Ms. Gassmann believed that other employees would be able to assist her with any lifting that exceeded her restrictions. The employer declined to allow Ms. Gassmann to return to work with the lifting restriction. The employer notified Ms. Gassmann that the employer was changing Ms. Gassmann's employment status from full-time to "casual" or on-call. The employer had hired one or more new cooks during Ms. Gassmann's absence.

On February 3, 2015, Dr. Christianson changed the medical restrictions to remove the requirement that Ms. Gassmann wear the splint, but limited her to lifting no more than five pounds when with her right hand when she was not wearing the splint. Ms. Gassmann does not have a lifting restriction when she wears the splint. The doctor indicated that Ms. Gassmann should not put her wrist in an awkward position. Ms. Gassmann provided the employer with a copy of her updated restrictions. The employer declined to allow Ms. Gassmann to return to work.

Ms. Gassmann has been able to perform farm work with her restrictions. Ms. Gassmann carries water buckets to feed livestock.

Ms. Gassmann began looking for other employment when her doctor released her to return to work with restrictions in January 2014 and when the employer declined to allow her to return to work at that time. Ms. Gassmann has made two to three job contacts each week.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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, (2) provide:

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.

(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.

Though Ms. Gassmann requested and the employer approved FMLA leave for a non-work-related injury. Though Ms. Gassmann was released to return to modified duties effective January 6, 2015, she was still healing and had not been released to perform her full duties at Lantern Park. Ms. Gassmann saw her doctor again on February 3, 2015 and was released to perform right hand lifting without the splint that did not exceed five pounds. She was also prohibited from using her right wrist in awkward positions. The employer has twice declined to return Ms. Gassmann to the employment upon being provided with a copy of the medical restriction document. The employer went beyond that and changed Ms. Gassmann's employment status to on-call upon expiration of her FMLA leave on or about January 8, 2015. That administrative law judge concludes that the change to on-call status indicates an effective separation from the employment. Once a separation from the employment occurred, the analysis of whether Ms. Gassmann was able to work or available for work was no longer specific to the employment at Lantern Park. The test instead became whether she could perform some type of work that worker's perform in her labor market, which includes the Kalona and Iowa City/Coralville area. Ms. Gassmann's doctor has at least three times opined that Ms. Gassmann is able to work. The weight of the evidence indicates that Ms. Gassmann has met the work ability and work availability requirement since she established her claim. Effective January 11, 2015, Ms. Gassmann is eligible for benefits, provided she meets all other eligibility requirements.

This matter will be remanded to the Benefits Bureau for adjudication of Ms. Gassmann's eligibility for benefits, and the employer's liability for benefits, based on the separation that occurred on or about January 8, 2015.

#### **DECISION:**

The February 10, 2015, reference 01, decision is reversed. The claimant has been able and available for work since establishing her claim for benefits. Effective January 11, 2015 the claimant is eligible for benefits, provided she meets all other eligibility requirements.

**REMAND:**

This matter is remanded to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits, based on the separation that occurred on or about January 8, 2015.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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