

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FELIPA ORELLANA DE ROMERO
Claimant

AMAZON.COM SERVICES, INC.
Employer

APPEAL 24A-UI-04214-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/17/24
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

Felipa Orellana De Romero, the claimant/appellant,¹ appealed the Iowa Workforce Development (IWD) April 23, 2024, (reference 01) unemployment insurance (UI) decision. IWD denied Ms. Orellana De Romero REGULAR (state) UI benefits as of March 17, 2024 because IWD concluded she is not able to work at this time due to injury. On April 30, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to Ms. Orellana De Romero and the employer for a telephone hearing scheduled for May 13, 2024.

The administrative law judge held a telephone hearing on May 13, 2024. Ms. Orellana De Romero participated personally through a Spanish interpreter from CTS Language Link. Erica Romero, Ms. Orellana De Romero's daughter and co-worker participated as a witness for Ms. Orellana De. Romero through a Spanish interpreter from CTS Language Link. The employer did not participate in the hearing. The administrative law judge took official notice of the administrative record and admitted Claimant's Exhibit A as evidence.

The administrative law judge concludes Ms. Orellana De Romero is not eligible for UI benefits as of March 17, 2024 because she is not able to and available for work as of this date.

ISSUE:

Is Ms. Orellana De Romero able to and available for work as of March 17, 2024?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Orellana De Romero began working for the employer on August 1, 2022. She works as a part-time ship dock worker. The employer pays her \$20.20 per hour.

In November 2023, Ms. Orellana De Romero gave the employer a note from her medical provider asking for an accommodation for her injured finger. Ms. Orellana De Romero had

¹ Claimant is the person who applied for UI benefits. Appellant is the person or employer who appealed.

injured her fingers before she began working for the employer. The employer moved Ms. Orellana De Romero to a different job as an accommodation. Eventually, Ms. Orellana De Romero was unable to do this new job due to her injury. Ms. Orellana De Romero went on leave for weeks from March 19, 2024 through April 2.

Ms. Orellana De Romero contacted the employer on April 6. The employer told Ms. Orellana De Romero that she must provide a note from her medical provider to return to work. On April 11, Ms. Orellana De Romero gave the employer a note from her medical provider showing that she may return to work but with several restrictions, including no lifting, pushing, or pulling over 40 pounds, no stairs or ladders and no repetitive motions with her hands. The note also stated that Ms. Orellana De Romero's restrictions are permanent due to her condition. The employer told Ms. Orellana De Romero that she would remain on leave until July 10.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Orellana De Romero is not able to and available for work as of March 17, 2024.

Iowa Code § 96.4(3) provides, in relevant part:

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 96.1A, subsection 37, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, paragraph "c".

Iowa Admin. Code r. 871-24.22(1)a and (2)h 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.

(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.

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.

h. Available for part of week. Each case must be decided on its own merits. Generally, if the individual is available for the major portion of the workweek, the individual is considered to be available for work.

Iowa Admin. Code r. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work.² 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."³ "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."⁴ "[O]nly those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits."⁵

In this case, Ms. Orellana De Romero's medical issue is not work-related, and she is still under her work restrictions from her medical provider. While Ms. Orellana De Romero may be able to do light duty work, the employer is not obligated to accommodate a non-work-related injury. Since Ms. Orellana De Romero's medical provider had not yet released her to return to full-duty work, she is not able to and available for work as of March 17, 2024, and she is not eligible for UI benefits as of this date.

² Iowa Admin. Code r. 871-24.22.

³ *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).

⁴ *Sierra* at 723.

⁵ *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004)

DECISION:

The April 23, 2024 (reference 01) UI decision is AFFIRMED. Ms. Orellana De Romero is not able to and available for work as of March 17, 2024. So, she is not eligible for UI benefits as of this date.



Daniel Zeno
Administrative Law Judge

May 20, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.