

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARTHA J REAVES

Claimant

APPEAL 17A-UI-11292-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DES MOINES REGIONAL TRANSIT AUTH

Employer

OC: 10/15/17

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 15, 2017, (reference 04) unemployment insurance decision that denied benefits based upon not being able to or available for work effective October 31, 2017. The parties were properly notified about the hearing. A telephone hearing was held on November 21, 2017. Claimant participated and was represented by paralegal Jim Hamilton. Employer participated through human resource specialist Cindy Nelson. Claimant's Exhibit A was received.

ISSUE:

Is the claimant able to work and available for work effective October 31, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full/part-time paratransit bus operator from November 28, 2016, until July 31, 2017. Her last day of work was May 24, 2017. Claimant injured her back on August 2, 2016, while employed as a parts delivery driver at Genuine Parts Company. That employer-assigned physician released her to work prior to applying for work with DART.

During the application process, she did not notify DART of her prior injury. While working at DART, she experienced vertigo and undiagnosed back problems. A contested workers' compensation claim has not yet been filed. She was separated from DART on July 31, 2017, for no disqualifying reason. See October 31, 2017, reference 01, unemployment insurance decision.

On November 7, 2017, Tonya Diehn PA-C assigned light duty restrictions indefinitely related to the back condition, and limited her to desk work and lifting 25 pounds at most. Because of the vertigo, she is not authorized to drive a commercial vehicle. Claimant has work history in the base period driving a parts delivery vehicle. She is applying for work as a cashier, for which she has experience. She is also seeking a desk job but has no prior experience like that.

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 October 15, 2017.

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. 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.

Since the employment ended on July 31, 2017, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since she has performed cashier work, she is considered able to work even if she cannot yet return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of November 7, 2017. Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The October 31, 2017, (reference 04) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work effective November 5, 2017. Benefits are allowed, provided she is otherwise eligible. Benefits are withheld between October 15 and November 4, 2017.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs