

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JO ANN KONCHAN
Claimant

**ENGLISH VALLEYS NURSING CARE
CENTER**
Employer

APPEAL 16A-UI-11073-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/11/16
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 4, 2016, (reference 02) unemployment insurance decision that denied benefits based upon the claimant's ability to work. The parties were properly notified about the hearing. A telephone hearing was held on October 27, 2016. The claimant participated personally. The employer participated through Jody Morrison, administrator. Patty Kluge and Holly Wiseman Mihal also testified for the employer. Claimant exhibits A, B, and C were received into evidence. Employer exhibits 1 through 6 were also received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective September 11, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a CNA and last performed work on May 16, 2016. The claimant has not separated from the employer. The claimant injured her back at work on May 5, 2016 and again on May 15, 2016. She went on a leave of absence through worker's compensation beginning May 16 until July 27, 2016.

The undisputed evidence is the worker's compensation claim is being disputed and not fully resolved, at the time of the hearing. During the course of the claimant's leave of absence, she was issued restrictions through the worker's compensation doctor (Employer exhibits 3 and 4). The employer was unable to accommodate the claimant's restrictions while on her worker's compensation related leave. The claimant then moved to a second leave of absence because her personal physician has not yet released her without restrictions (Employer exhibit 2 and claimant exhibit B). There has been no change in the restrictions which prohibit pushing, pulling and lifting since the claimant saw her doctor on August 10, 2016. The employer is aware of the

claimant's restrictions and still unable to accommodate them at this time. The claimant has requested to return to work that will allow her to work with some sitting and within her restrictions.

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 11, 2016.

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 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.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the

evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witnesses and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the claimant has established she is able to and available for work.

In the case at hand, there is an established injury for which the claimant was treated under Worker's Compensation for, and there was no subsequent injury alleged by either party. The restrictions recommended are based on the claimant's work injury, even though they were issued by her personal physician (Employer exhibit 2 and claimant exhibit B). These restrictions are consistent with those offered by the worker's compensation doctor when the claimant was under their care (Employer exhibits 3 and 4). Therefore, the administrative law judge concludes that inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions the claimant has established her ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The October 4, 2016, (reference 02) unemployment insurance decision is reversed. The claimant is able to work and available for work effective September 11, 2016. Benefits are allowed, provided she is otherwise eligible.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs