

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CRYSTAL A KIROFF
Claimant

APPEAL 15A-UI-14290-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 09/13/15
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 December 23, 2015, (reference 05), unemployment insurance decision that denied benefits based upon not being able to or available for work effective November 29, 2015. After due notice was issued, a telephone conference hearing was scheduled to be held on January 21, 2016. Claimant participated.

ISSUE:

Is the claimant able to and available for work effective November 29, 2015?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was separated from employment with Midwest Homestead of Mason City (328586) in August 2015, after a disputed work injury in January 2015, and knee surgery in March 2015. A contested workers' compensation claim is pending. She had bariatric surgery on December 1, 2015, upon medical advice. She was released to return to work with restrictions on December 10, 2015. (Claimant's Exhibit A) Because at that time the schedule had already been set through December 21, 2015, she returned to work at Professional Transportation, Inc. on December 22. She began new employment with Lutheran Services in Iowa on December 21.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work between December 1, 2015, and December 12, 2015. She became able to and available for work effective the week of December 13, 2015.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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. 871-24.23(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.

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).

Inasmuch as the medical condition was work-related [Midwest Homestead of Mason City (328586)] and the treating physician has released the claimant to return to work, even with restrictions, she has established her ability to work effective December 13, 2015.

DECISION:

The December 23, 2015, (reference 05) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work between November 29 and the week ending December 12, 2015. She was able to work and available for work effective December 13, 2015. Benefits are allowed, provided she is otherwise eligible. Any related overpayment for that week shall be removed. See reference 06 unemployment insurance

decision. The account of Professional Transportation, Inc. (362155) shall not be charged for benefits paid the week ending December 13, 2015.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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