

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KATHLEEN HUNT
Claimant

APPEAL NO. 07A-UI-02120-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DILLARD'S INC
Employer

OC: 01/14/07 R: 02
Claimant: Appellant (1)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Kathleen Hunt (claimant) appealed an unemployment insurance decision dated February 23, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was not able to perform work at this time due to an injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 19, 2007. The claimant participated in the hearing. The employer participated through David Markoff, Store Manager and Dori Henderson, Assistant Store Manager. Employer's Exhibits One through Three were admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time sales associate from July 26, 2004 through December 26, 2006 when she went on a medical leave of absence due to a non-work-related medical condition. Her current medical restrictions allow her to only stand for 15 minutes at a time, after which she needs to sit for 20 minutes. Her leave expires on March 26, 2007 and she is scheduled to return to work at that time.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22.

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".

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant's current medical restrictions of standing for no longer than 15 minutes at a time prevent her from performing the essential functions of her position. She left on a non-work-related medical leave of absence on December 26, 2006 and is scheduled to return to work on March 26, 2007. Since the claimant is currently not medically able to work, benefits are denied.

DECISION:

The unemployment insurance decision dated February 23, 2007, reference 01, is affirmed. The claimant does not meet the availability requirements of the law and does not qualify to receive unemployment insurance benefits.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css