

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET C MCKIBBIN
Claimant

APPEAL NO. 13A-UI-09332-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/30/13
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Janet McKibbin (claimant) appealed a representative's August 9, 2013, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was not willing to work in her usual occupation. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on September 17, 2013. The claimant was represented by Mary Hamilton, Attorney at Law, and participated personally. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant is able for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The is a certified nursing assistant On August 8, 2013, the claimant told a workforce advisor that she could not be a certified nursing assistant anymore because her chiropractor told her that she could not perform heavy lifting anymore. On August 15, 2013, the claimant's chiropractor recommended that the claimant not continue with heavy lifting. The claimant is able to work in any occupation that does not require her to lift people. She has applied to work at flower shops, auto detailing establishments, and retail stores.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is available for work.

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 24.22(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.

The claimant is restricted from lifting. Other than this restriction the claimant can perform work in a number of positions which do not require lifting heavy objects. The claimant has met her burden of proof to show that she has the ability to work.

DECISION:

The representative's August 9, 2013, decision (reference 02) is reversed. The claimant is qualified to receive unemployment insurance benefits because she is available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css