

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PAULA J BEHR
Claimant

APPEAL 15A-UI-00936-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/20/14
Claimant: Appellant (4)**

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 January 15, 2015 (reference 02) unemployment insurance decision that denied benefits based upon not being able to or available for work from July 20 through November 15, 2014. After due notice was issued, a telephone conference hearing was scheduled to be held on February 17, 2015. Claimant participated. Claimant's Exhibits A and B were received.

ISSUE:

Is the claimant able to and available for work from July 20 through November 15, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is under medical care after non-work-related foot surgery on August 6, 2014. A week after surgery, she was restricted to sedentary work. Since then she has continued to use a boot and roll-about. She has not yet been released to work without restriction (Claimant's Exhibit A). Claimant was separated from her part-time employment with Hy-Vee as a floral sales person on November 13, 2014, which exclusively required standing. (That separation has been referred to be set up for an appeal hearing with notice to both parties.) She has been working in self-employment as a realtor with American Realty while seeking part- and full-time employment as a receptionist or other jobs that would allow her to sit and stand in combination as needed.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to and available for work through the week ending August 9, 2014 and not able to work and available for work between August 10 and November 15, 2014.

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, (2) provide:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(3) and (35) provide:

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

(3) If an individual places restrictions on employability as to the wages and type of work that is acceptable and when considering the length of unemployment, such individual

has no reasonable expectancy of securing work, such individual will be deemed not to have met the availability requirements of Iowa Code § 96.4(3).

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Since claimant was off work due to a non-work-related medical condition and failed to provide a full medical release without restrictions, she has not established her ability to or availability for work in the part-time employment with Hy-Vee through her separation on November 15, 2014. After that she sought work consistent with her restrictions, medical appliance use, and work experience. Accordingly, benefits are denied.

The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that:

"Insofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

As the surgery was not until August 8, claimant was able to and available for work through the week ending August 9, 2014. Effective August 10 claimant was unable to perform her work duties due to a personal injury and since the employer is not obligated to accommodate a non-work-related injury, she has not established her ability to or availability for work through November 15, 2014. Claimant has established her ability to and availability for work thereafter. She may not be considered available for work if she spends the majority of the work week on self-employment.

DECISION:

The January 15, 2015 (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant was able to and available for work from July 20, 2014 through the week ending August 9, 2014. She was not able to work and available for work effective August 10, 2014 through November 15, 2014 when she was separated from work that required standing.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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