

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEEANNA L WEILAND
Claimant

APPEAL NO. 14A-UI-01396-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OSKALOOSA CARE CENTER INC
Employer

OC: 10/06/13
Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

DeeAnna Weiland (claimant) appealed a representative's January 30, 2014, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits as of January 5, 2014, because she was unable to perform work for Oskaloosa Care Center (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for February 25, 2014. The claimant was represented by Jim Hamilton, Paralegal, and participated personally. The employer participated by Tina Steffen, Administrator, and Denise Kitzman, Director of Nursing. The employer offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant is available 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 claimant worked for the employer from May 12, 2008, to May 15, 2013. The claimant suffered a work-related injury in 2011. On October 26, 2012, the claimant's functional capacity exam released her to return to work with restrictions and she returned to work.

In May 2013, claimant had muscle spasms in her back that were caused by her work-related injury and needed a cane to perform her work. The director of nursing told the claimant she did not want her using the cane at work because it was not safe for the claimant or the residents. The claimant notified the administrator and the administrator said she would talk to the director of nursing. Both the administrator and the director of nursing forgot all about the conversations. The claimant attempted to use railings and countertops to walk at work but the spasms would cause her to fall without having her cane for support.

The claimant requested and was granted Family Medical Leave (FMLA) from May 13 through August 12, 2013. On July 31, 2013, the claimant provided the employer a doctor's note stating she could not return to work and needed a cane to walk. When the claimant's FMLA expired,

she took personal leave because the employer would not let her work with her cane. On February 12, 2014, the claimant's physician said she could return to work with restrictions. The note was provided to the employer on February 25, 2014. The employer has work available within the restrictions for the claimant.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is eligible to receive unemployment insurance benefits as of February 12, 2014.

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.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant's physician restricted her from working from July 31, 2013, through February 13, 2014. The claimant was released to return to work with restrictions by her physician on February 13, 2014. She is considered to be able and available for work as of the week ending February 22, 2014, because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits as of the week ending February 22, 2014.

DECISION:

The representative's January 30, 2014, decision (reference 02) is modified in favor of the appellant. The claimant is considered to be able and available for work as of the week ending February 22, 2014.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs