

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

AUTUMN MAYER
Claimant

TARGET CORPORATION
Employer

APPEAL 21A-UI-06363-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/20/20
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On February 18, 2021, Autumn Mayer (claimant/appellant) filed an appeal from the February 16, 2021 (reference 03) unemployment insurance decision that denied benefits as of December 20, 2020 based on a finding claimant was unable to perform work due to surgery.

A telephone hearing was held on May 6, 2021. The parties were properly notified of the hearing. The claimant participated personally. Target Corporation (employer/respondent) participated by HR Business Partner Stephanie Detweiler.

Claimant's Exhibit 1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time warehouse worker. Claimant's first day of employment was September 29, 2020. The last day claimant worked on the job was December 9, 2020. Claimant separated from employer on March 1, 2021.

Claimant was unable to work due to a non-work-related medical condition from the last day worked and continuing until her doctor released her to return to work with restrictions on February 7, 2021. Employer chose not to return claimant to work within the restrictions and instead extended her leave of absence. Claimant hoped to return on March 1, 2021, but was unable to due to medical complications which made her unable to do the warehouse worker job. Claimant chose to resign at that time and search for other work. She has been searching for other work since that date.

Claimant filed a claim for benefits each week from the benefit week ending December 26, 2020 through the benefit week ending April 24, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the February 16, 2021 (reference 03) unemployment insurance decision that denied benefits as of December 20, 2020 based on a finding claimant was unable to perform work due to surgery is MODIFIED in favor of appellant. Benefits are allowed as set forth below, provided claimant is otherwise eligible.

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".

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.

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). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar 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)).

Inasmuch as the medical condition was not work-related and the treating physician did not release claimant to return to work without restriction, she has not established her ability to work while still an employee of employer effective from the benefit week ending December 26, 2020 through the week ending February 6, 2021. While she may have been able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition.

Since the employment ended on March 1, 2021, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Claimant was able to perform work other than the warehouse work she was performing for employer and was searching for other work at that time. She is therefore considered able and available for work and eligible for benefits from the week ending March 6, 2021, provided she is otherwise eligible.

DECISION:

The February 16, 2021 (reference 03) unemployment insurance decision that denied benefits as of December 20, 2020 based on a finding claimant was unable to perform work due to surgery is MODIFIED in favor of appellant. Benefits are allowed as set forth above, provided claimant is otherwise eligible.



Andrew B. Duffelmeyer
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 478-3528

May 14, 2021
Decision Dated and Mailed

abd/scn

Note to Claimant:

If you disagree with this decision, you may file an appeal with the Employment Appeal Board by following the instructions on the first page of this decision. If this decision denies benefits, you may be responsible for paying back benefits already received.

Individuals who are disqualified from or are otherwise ineligible for **regular** unemployment insurance benefits but who are unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.