

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINA K GAUTREUX**  
Claimant

**APPEAL NO. 09A-UI-06001-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COMMUNITY CARE INC**  
Employer

**OC: 07/20/08**  
**Claimant: Appellant (4)**

Section 96.4-3 – Able & Available for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated April 13, 2009, reference 06, which held claimant not eligible to receive unemployment insurance benefits as of March 11, 2009 because the claimant was not able and available for work due to surgery. After due notice a telephone conference hearing was scheduled for and held on May 14, 2009. The claimant participated personally. Participating as a witness for the employer was Ms. Ginger Pangel, Assistant Director of Human Resources.

**ISSUE:**

The issue is whether the claimant was able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant underwent surgery on March 11, 2009 and was not released to return to work until March 26, 2009 by her physician. The claimant had requested an open ended medical leave of absence from her former employer. The claimant's request for time off work had not been granted.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant is able to work and available for work effective March 26, 2009.

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(2) 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.

(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.

871 IAC 24.23(1), (35) 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.

(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.

Based upon the claimant's testimony that she was released by her physician to return to work effective March 26, 2009, the administrative law judge concludes that the claimant was able and available for work effective that date. Although the notice of representative's decision clearly instructs the claimant that she was denied benefits effective March 11, 2009 and the denial would continue until she provided proof that she was able to work, Ms. Gautreaux did not request any medical documentation from her physician nor supply it to workforce development. It appears the claimant did not take the time nor the opportunity to read the representative's decision and provide the information necessary to workforce development to expedite her claim for benefits. Benefits are allowed effective March 26, 2009, provided the claimant has demonstrated that she has met all other conditions of eligibility of Iowa law.

**DECISION:**

The representative's decision dated April 13, 2009, reference 06, is affirmed as modified. The claimant was not able and available for work March 11, 2009 through March 26, 2009. The claimant is able and available for work after March 26, 2009, provided that she meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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