

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**JULIA A DUNCAN**  
Claimant

**APPEAL 22A-UI-03326-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FBG SERVICE CORPORATION**

**OC: 12/12/21  
Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

On January 18, 2022, Julia Duncan (claimant/appellant) filed an appeal from the January 12, 2022 (reference 02) unemployment insurance decision that denied benefits effective December 12, 2021 based on a finding claimant was unable to work due to injury.

A telephone hearing was held on March 8, 2022. The parties were properly notified of the hearing. The claimant participated personally. FBG Service Corporation (employer/respondent) did not appear or participate.

Claimant's Exhibits 1 and 2 were 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 works for employer as a full-time cleaner. Claimant's first day of employment was December 2020. Claimant's doctor held her out of work from November 30, 2021 until January 31, 2022 due to a personal injury. Claimant had a broken right leg and was unable to put any weight on it or drive during that time. This made claimant unable to perform the essential duties of the cleaner position. Claimant requested light duty from employer during this period but none was offered. Claimant returned to work on or about January 31, 2022 and remains employed there to date. Claimant filed a claim for benefits in the weeks ending December 18 and 25, 2021 and January 1, 2022.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the January 12, 2022 (reference 02) unemployment insurance decision that denied benefits effective December 12, 2021 based on a finding claimant was unable to work due to injury is AFFIRMED.

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.

Iowa Admin. Code r. 871-24.23 provides in relevant part:

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

(34) Where the claimant is not able to work due to personal injury.

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

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)).

Employers are required to make reasonable accommodations for employees with disabilities under state and federal law. See Iowa Code section 216.6; 42 U.S.C.A. § 12112. An employee who can perform the essential functions of a job with or without a reasonable accommodation is able to work. *Sierra* at 723. Employers are not required to make reasonable accommodations for employees unable to work due to injury.

Claimant was unable to work due to injury during the weeks filed. Her doctor was restricting her from work and she was unable to place any weight on her leg during that time, which was necessary to perform the function of her position. Employer had no duty to accommodate the injury. She is therefore ineligible for benefits during that period.

**DECISION:**

The January 12, 2022 (reference 02) unemployment insurance decision that denied benefits effective December 12, 2021 based on a finding claimant was unable to work due to injury is **AFFIRMED**.



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Andrew B. Duffelmeyer  
Administrative Law Judge  
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March 17, 2022  
Decision Dated and Mailed

abd/abd