

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**STACEY J SOY**  
Claimant

**ABRH LLC**  
Employer

**APPEAL 17A-UI-09552-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/27/17  
Claimant: APPELLANT (2)**

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Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 14, 2017, (reference 02) unemployment insurance decision that denied benefits effective August 27, 2017. The parties were properly notified about the hearing. A telephone hearing was held on October 4, 2017. Claimant participated. Employer participated through Shawn McNeely, General Manager and was represented by Marcy Schneider, of Equifax.

**ISSUE:**

Is the claimant able to and available for work effective August 27, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant went off work to have a non-work related shoulder surgery on August 14, 2017. Prior to leaving work her direct supervisor, Mr. McNeely, told her that he thought he could bring her back to work on modified duty once her doctor released her to return to some kind of work. Mr. McNeely neglected to tell the claimant that it was not his decision to allow modified work, but rather he would be required to secure permission from the corporate human resources department.

The claimant met with Mr. McNeely on August 25, 2017. She gave him the doctor's note that released her to return to work effective August 27 with the work restriction that she could not use her right arm at all. Mr. McNeely made arrangements for the claimant to return to work in the modified duty position of hostess. The claimant was also going to act as a trainer for new food servers. Mr. McNeely then faxed the claimant's work restrictions to the corporate human resources office. The employer's corporate human resources then told Mr. McNeely that he could not allow the claimant to work until she was released by her doctor and no longer had to wear a sling. Mr. McNeely notified the claimant of the corporate office's decision that she could not work. At hearing Mr. McNeely made it clear that he had real work for the claimant to perform while she recovered from her surgery and the only thing stopping the claimant from working was the corporate office's refusal to let her work.

In the past, the employer has accommodated a work restriction for a food server who was not able to lift more than twenty-five pounds due to a non-work related medical condition, despite the fact that the job description requires food servers to be able to lift up to fifty pounds occasionally. No explanation was given as to why the claimant could not be accommodated as another employee had been accommodated.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective August 27, 2017.

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(35) provides:

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

(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.

This employer has demonstrated an ability and willingness in the past to accommodate work restrictions that arise from non-work related medical conditions. The work Mr. McNeely needed

and wanted the claimant to perform was not a 'made-up' job but real work functions as a hostess and training other workers. No explanation was offered by the employer as to why one employee was allowed to work with non-work related work restrictions, and the claimant here was not. While the claimant was not able to perform her regular job duties, she was certainly able to perform other valuable work for the employer, but was not allowed to do so. Under these circumstances the claimant has established her ability to work and her availability for work despite her work restriction. Thus claimant is considered as able to work as of August 27, 2017.

**DECISION:**

The representative's decision dated September 14, 2017, (reference 02) is reversed. The claimant is able to work and available for work effective August 27, 2017. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs