

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LYNN N WEESE
Claimant

APPEAL NO. 11A-UI-05093-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MARSHALLTOWN HOSPITALITY LLC
SUPER 8 HOTEL**
Employer

**OC: 03/06/11
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 6, 2011, reference 03, which held claimant to have quit without good cause attributable to employer. After due notice, a telephone conference hearing was scheduled for and held on May 24, 2011. Claimant participated personally. Employer responded to the hearing notice and did not participate as the representative was not available. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked for employer part time. Claimant had a non-work-related injury that gave her temporary work restrictions. Claimant returned to work for a short time but could not do her job of pulling laundry as it made her shoulder hurt. Claimant thinks that her work with employer aggravated the shoulder problem. The tests have not yet been performed that would prove this as a work-related condition. Claimant effective January 14, 2011 cannot push, pull or reach with the Right upper extremity. Claimant asked for work. Employer refused to offer work until claimant is released to full duty. Claimant is still under medical care. Claimant is still employed with this employer.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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(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.

871 IAC 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.

Inasmuch as the injury was not work-related and the treating physician has not released the claimant to return to work full duty, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The decision of the representative dated April 6 2011, reference 03, is modified. Claimant's employment has not been terminated with this employer. Claimant is not eligible to receive unemployment insurance benefits, effective January 14, 2011 because she is not able and available for work.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs