

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH A OGLE**

Claimant

**APPEAL NO. 14A-UI-02807-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CONSUMER SAFETY TECHNOLOGY LLC**

Employer

**OC: 02/09/14**

**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Elizabeth Ogle filed a timely appeal from the March 5, 2014, reference 02, decision that denied benefits effective February 9, 2014, based on an agency conclusion that she was unable to perform work due to illness. After due notice was issued, a hearing was held on April 4, 2014. Ms. Ogle participated. Jason Hooton represented the employer. The administrative law judge took official notice of the documents generated in connection with the fact-finding interview.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Elizabeth Ogle established a claim for benefits that effective February 9, 2014. Ms. Ogle has last performed work for employer Consumer Safety Technology, L.L.C. Ms. Ogle had been discharged from that employment due to attendance on February 14, 2014. Ms. Ogle's absences had been due to illness. Ms. Ogle's doctor had taken Ms. Ogle off work for the period of February 5-17, 2014. Ms. Ogle's doctor had not provided her with a release indicating that she could return to work on or after February 17, 2014.

At the time Ms. Ogle established her claim for benefits, she experiencing multiple symptoms of illness that included fevers, soreness, diarrhea and problems with her stomach. Ms. Ogle had undergone blood work and CT scans to diagnose her ailment. Ms. Ogle had undergone minor surgery in December to repair her bowel. Ms. Ogle underwent a colonoscopy on February 27, 2014. On March 10, 2014, Ms. Ogle met with her doctor and learned that she had a twisted colon and that she would need additional surgery. Ms. Ogle indicates that her doctor wants her to wait for the surgery until she is in excruciating pain. Ms. Ogle indicates that the surgery will require moving scar tissue. In the meantime, Ms. Ogle had a diagnosis of irritable bowel syndrome. Ms. Ogle takes hydrocodone as needed to address her pain and is on a restricted diet. From the time when Ms. Ogle established her claim for benefits until March 17, 2014, Ms. Ogle was taking hydrocodone twice daily, one in the morning and one before bed, to

address her pain issues. At the time of the appeal hearing on April 4, 2014, Ms. Ogle reported that she had most recently taken hydrocodone to address her pain a couple days before the hearing. Ms. Ogle reports that the hydrocodone pills make her groggy and that that is why she cut down to one pill per day before bedtime.

At the time of the hearing, Ms. Ogle provided limited work search information. During the week that ended February 15, Ms. Ogle had applied at Casey's and her sister, who works at Titan Tire, had given Ms. Ogle's resume to Titan Tire. Ms. Ogle is unable to state what job contacts she made for the week ending February 22, 2014. During the weeks that ended March 1, March 8, 2014, Ms. Ogle made two job contacts. Ms. Ogle can only remember one job contact for the weeks ending March 15 and March 22, 2014. For the week ending March 29, 2014, Ms. Ogle made two job contacts. For the week ending April 5, 2014, the week of the appeal hearing, Ms. Ogle had made no job search as of the Friday morning hearing time.

### **REASONING AND CONCLUSIONS OF LAW:**

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(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 24.22(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.

Ms. Ogle has presented insufficient evidence to establish that she has been able to work and available for work since she established her claim for benefits. At that time Ms. Ogle established her claim she was on a lengthy absence from work due to illness. Since Ms. Ogle established her claim for benefits, she has been depending on hydrocodone, a narcotic, for pain relief. Until March 17, 2014, Ms. Ogle was taking two pills per day, one in the morning and one before bed, and the pills made her groggy. Ms. Ogle had continued to be in pain, had continued to be under the care of a doctor, and expects things to get worse before she undergoes more surgery. Between the time that Ms. Ogle established her claim for benefits and the appeal hearing on April 4, 2014, there had been four weeks when Ms. Ogle had made two job contacts and four weeks during which she had made none or only one job contact. During the week of the hearing, Ms. Ogle had made no job contacts as of Friday morning.

Ms. Ogle has not met the work ability and availability requirements since she established her claim for benefits and, for those reasons, is not eligible for benefits. Benefits are denied effective February 9, 2014. The able and available disqualification continued as of the April 4, 2014 appeal hearing. The able and available disqualification will continue until Ms. Ogle provides medical documentation indicating that she has been released to work, what types of work she is released to perform, and the number of hours she can reasonably work given her medical condition. Ms. Ogle must also demonstrate an active and earnest search for new employment.

#### **DECISION:**

The claims deputy's March 5, 2014, reference 02, decision is affirmed. The claimant has not met the able and available requirements since establishing her claim for benefits. Benefits are denied effective February 9, 2014. The able and available disqualification continued as of the

April 4, 2014 appeal hearing. The able and available disqualification will continue until the claimant provides medical documentation indicating that she has been released to work, what types of work she is released to perform, and the number of hours she can reasonably work given her medical condition. The claimant must also demonstrate an active and earnest search for new employment.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs