

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**LORA L BAKER**  
Claimant

**KOPPENHAVER & ASSOCIATES PC**  
Employer

**APPEAL 16A-UI-08517-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/03/16**  
**Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 28, 2016, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on August 23, 2016. Claimant participated. Employer participated through Ann Koppenhaver, Owner and Aarika Koppenhaver, Staff Accountant.

**ISSUE:**

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 currently has no restrictions from her treating doctor that prohibit her from working. The claimant still has a raspy low voice, so some jobs that require extensive talking are foreclosed for her. However, the claimant established she had been applying for jobs that would require very little talking. She was able to perform many job tasks for her prior employer, establishing she is still able to work in an office environment. There are jobs available in the job market that do not require extensive talking.

**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.

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".

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.

Claimant has no medical restriction or other limitation on her employability other than her raspy low voice. She has established that while she may not be able to work as a receptionist, there are jobs she could physically perform even with her voice problems. She is actively seeking work. She is able to and available for work effective July 3, 2016. Accordingly, benefits are allowed.

**DECISION:**

The July 28, 2016, (reference 03) decision is affirmed. The claimant is able to work and available for work effective July 3, 2016. Benefits are allowed.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs