

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VIENGKEO L ANGSOUVAN**  
Claimant

**APPEAL 17A-UI-01551-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**  
Employer

**OC: 01/15/17  
Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 1, 2017, (reference 03) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on March 3, 2017. Claimant participated with her spouse Khambay Angsouvan and was represented by Eric Bigley, Attorney at Law. A legal interpreter for the Laotian language was not available from CTS Language Link but claimant and her spouse were able to provide sufficient testimony without one. Mr. Bigley opted to proceed without one rather than postpone the hearing. Employer did not respond to the hearing notice instruction and did not participate. Claimant's Exhibits A through E were received.

**ISSUE:**

Is the claimant able to work and available for work effective January 15, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time production worker when he injured her left knee at work on June 6, 2014. Douglas Cooper, M.D. diagnosed a lateral meniscus tear and performed surgery on January 15, 2015. (Claimant's Exhibits A, C) Cooper released her to full-duty work on August 28, 2014. (Claimant's Exhibit E-5) Peter Matos, D.O. issued a permanent impairment rating of ten percent on November 19, 2015. (Claimant's Exhibit D) On December 1, 2015, Matos assigned permanent restrictions of sedentary work and limited walking. (Claimant's Exhibit D-7) The employer provided modified duty work through June 17, 2016. (Claimant's Exhibit E) Matos does not believe claimant would meet Supplemental Security Income (SSI) or Social Security Disability Insurance (SSDI) standards. (Claimant's Exhibit E-1)

Claimant is making at least two job contacts per week seeking jobs consistent with her restrictions such as production quality inspector and greeter. She is taking continuing education for English as a Second Language (ESL). She has not yet explored vocational rehabilitation with Iowa Vocational Rehabilitation Services. <http://www.ivrs.iowa.gov/>

## 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 January 15, 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.

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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.* Some employees with restrictions will be considered disabled and thus protected by the Iowa Civil Rights Act and the American's with Disabilities Act. Although disabled these employees may still be "able and available" if reasonable accommodation by employers would make them so. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993). The employee is not automatically be deemed to be unduly restricted from employment under Iowa Admin. Code r. 871-24.22(2)m.

At the point where claimant was separated from employment her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. She is considered able to work even if she cannot return to a job as most recently performed for

the employer. Inasmuch as the medical condition was work-related and the employer allowed claimant to work in light duty assignments for a period of time, but removed previously available light duty work, claimant has established her ability to and availability for work as of January 15, 2017.

**DECISION:**

The February 1, 2017, (reference 03) unemployment insurance decision is reversed. The claimant is able to work and available for work effective January 15, 2017. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs