

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRANDI J SWARTZ
Claimant

EAST CENTRAL IOWA COOPERATIVE
Employer

APPEAL 17A-UI-03499-JCT
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/26/17
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 23, 2017, (reference 03) unemployment insurance decision that denied benefits based upon the claimant's ability and availability to perform work. The parties were properly notified about the hearing. A telephone hearing was held on April 21, 2017. The claimant participated personally. The employer participated through Randy Carlholm, general manager. Loretta Doepke and Joe Murphy also attended the hearing on behalf of the employer. Employer Exhibits 1 and 2, and Claimant Exhibits A and B were admitted into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective February 26, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was most recently employed full-time as an administrative assistant for East Central Iowa Cooperative.

The claimant's job search included receptions and administrative support positions, consistent with her employment history. She is currently looking only for part-time employment, due to a personal injury affecting her hand and neck, which occurred on August 11, 2016. The most recent doctor's note provided at the hearing, showed the claimant was to be excused from work by her treating physician through March 31, 2017 due to illness (Employer Exhibit 2). The claimant's next doctor's appointment is May 2017. At this time, she believes she has restrictions involving not lifting more than 10 pounds, she cannot sit or stand for long periods, and must be able to take frequent breaks as needed. She wears wrist braces often and takes medication for her condition.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective February 26, 2017.

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.

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.

In this case, the claimant sustained a personal injury to her hand and neck. The claimant is still undergoing medical care with a next scheduled appointment in May 2017. Since the employment ended with this employer, the claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history.

Inasmuch as the claimant's injury/illness was not work-related and the treating physician has not released the claimant to return to work with or without restriction, the claimant has not established her ability to work. The most recent medical documentation establishes the claimant could not work through March 31, 2017, (Employer Exhibit 2) and no updated medical documentation has been presented by the claimant. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given any medical restrictions.

DECISION:

The March 23, 2017, (reference 03) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective February 26, 2017. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given any medical restrictions.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs