

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BAHRIJA BACINOVIC
Claimant

CHI LIVING COMMUNITIES
Employer

APPEAL 17A-UI-10094-LJ-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/10/17
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 28, 2017 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work due to illness or injury. The parties were properly notified of the hearing. A telephone hearing was held on October 18, 2017. The claimant, Bahrija Bacinovic, participated and was represented by Marlon Mormann, Attorney at Law. Bosnian/English interpreter Karmela Lofthus also assisted with the hearing. The employer, Chi Living Communities, participated through Carey Boysen, Human Resources Director. Claimant's Exhibit A was received and admitted into the record without objection.

ISSUE:

Is the claimant able to work and available for work effective September 10, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time by this employer until August 24, 2017, when she was discharged because the employer could not accommodate her work restrictions. Claimant had been on medical leave since May 1, 2017. On August 24, claimant presented a note stating she was permitted to return to work for four hours per day for the next six weeks. (Exhibit A)

Effective the week of October 2, claimant has no restrictions on her ability to work. Claimant has been actively searching for work. She has pursued opportunities for working sit-down jobs that do not require a lot of physical movement. While claimant testified that she was searching for full-time work prior to October 2, she was not medically released to work full-time at that time.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to work and available for work effective the week ending October 7, 2017. Benefits are allowed from that week forward, provided she is otherwise eligible.

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(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.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

Prior to October 1, claimant was not released to work a full-time schedule. Claimant's base period of employment reflects full-time hours and wages. Because claimant was not available for full time employment, she cannot be considered available for work under Iowa Employment

Security Law prior to October 1, 2017. However, effective October 1, claimant was released to work full-time hours without any restrictions. She has made her required job contacts, and it appears that she is searching for work for which she is reasonably well-qualified. Therefore, claimant is considered available for work for the week ending October 7, 2017, and for all following weeks.

DECISION:

The September 28, 2017 (reference 02) unemployment insurance decision is modified in favor of appellant/claimant. The claimant is able to work and available for work effective October 1, 2017. Benefits are allowed, provided she is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn