

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**SUEVONN A QUEZADA**

Claimant

**APPEAL 19A-UI-06704-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CELLCO PARTNERSHIP**

Employer

**OC: 07/28/19**

**Claimant: Appellant (2)**

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:**

On August 22, 2019, Sue-Vonn A. Quezada (claimant) filed an appeal from the August 20, 2019, reference 05, unemployment insurance decision that denied benefits effective July 28, 2019 based upon the determination she was not able to and available for work due to illness. The parties were properly notified about the hearing. A telephone hearing was held on September 25, 2019 and consolidated with the hearing for appeal 19A-UI-06703-SC-T. The claimant participated personally. Cellco Partnership (employer) responded to the hearing notice and declined to participate in the hearing. No exhibits were offered into the record.

**ISSUE:**

Was the claimant able to work, available for work, and actively and earnestly seeking work effective July 28, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed her claim for benefits effective July 28, 2019 following her separation from employment. The claimant's doctor has restricted her ability to work stating she cannot bend, twist, stoop; cannot lift, push or pull anything over 20 pounds; cannot climb stairs excessively; and, must be able to sit and stand as needed. The claimant can work a customer service job that allows her to sit and stand as needed in either a retail or call center environment.

**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, and actively and earnestly seeking work effective July 28, 2019.

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 provides, in relevant part:

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.

...

(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 provides, in relevant part:

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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. The claimant has established there is work she is able to perform within her doctor's restrictions. Therefore, she is considered able to and available for work effective July 28, 2019.

**DECISION:**

The August 20, 2019, reference 05, unemployment insurance decision is reversed. The claimant is able to work and available for work effective July 28, 2019. Benefits are allowed, provided she is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

src/scn