

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**SHAMONTA Y WILLIAMS**

Claimant

**APPEAL 19A-UI-04555-DG-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRAPETREE MEDICAL STAFFING INC**

Employer

**OC: 02/24/19**

**Claimant: Respondent (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated May 28, 2019, (reference 09) that held claimant able to and available for work. After due notice, a hearing was scheduled for and held on June 28, 2019. Claimant participated personally. Employer participated by Gidget Wingad, Human Resources Specialist. Employer's Exhibit 1 was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant began working for employer as an on-call part-time employee on November 14, 2015. Claimant has other employer's in her wage history, and she is available for full-time employment.

Claimant's hours were restricted in April and May of 2019 because claimant was not able to accept work in Illinois because she needed a TB Tyne test done to be eligible to work in that state. Claimant paid to have that test done and read by a physician. Claimant has been able to accept more work from employer since she was able to have the test done in early June, 2019. Claimant has been accepting work assignments in Illinois, Mount Pleasant, Iowa and in the Quad Cities.

**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 March 31, 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(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 medical practitioner and has not been released as being able to work.

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. Emp't Appeal Bd.*, 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.*

Claimant is able to and available for work. She is currently accepting job assignments from the employer, and she was able to work beginning on March 31, 2019. Claimant has taken additional steps to make herself available to work in the State of Illinois by having a TB Tyne test administered by a physician at her own expense.

**DECISION:**

The decision of the representative dated May 28, 2019, (reference 09) is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective May 31, 2019, provided claimant meets all other eligibility requirements.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/scn