

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MERCEDES E CERNA GAITAN
Claimant

IOWA PREMIUM LLC
Employer

APPEAL NO. 21A-UI-21786-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/08/21
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant, Mercedes Cerna Gaitan, filed a timely appeal from the September 23, 2021, reference 02, decision that denied benefits effective August 8, 2021, based on the deputy's conclusion that the claimant was unable to work due to injury. After due notice was issued, a hearing was held on December 1, 2021. The claimant participated. The employer did not comply with the hearing notice instructions to register a number for the hearing, did not comply with the hearing notice instructions to call in at the time of the hearing, and did not participate. Attorney Philip Miller advised at the time of the hearing that he was not representing the claimant in connection with the hearing. Exhibit A was received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, the September 23, 2021, reference 01, decision, and the materials submitted for and generated in connection with the September 21, 2021 fact-finding interview.

ISSUE:

Whether the claimant was able to work and available for work for the period beginning August 8, 2021.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Mercedes Cerna Gaitan, established an original claim for benefits that was effective August 8, 2021. The claimant has made weekly claims for each week since she established the claim. At the time the claimant established her claim, she had most recently been employed by Premium Beef, L.L.C. as a full-time production worker and had most recently performed work for the employer on May 25, 2021. At that time, the claimant went off work in connection with pain in her right shoulder and right wrist. The claimant advises that a doctor took her off work. The claimant thereafter participated in physical and/or occupational therapy. Since the doctor took the claimant off work, no doctor has released the claimant to return to any type of work. The claimant continues to experience significant pain in her right shoulder and right wrist. The claimant advises that she is unable to work. The claimant advises that she was referred for further intensive medical evaluation, but has been unable to obtain such evaluation due to a lack of insurance and lack of money.

After the claimant established her unemployment insurance claim, the claimant made a less than active and less than earnest search for new employment. The claimant made no job contacts during the week that ended August 14, 2021. During the week that ended August 21, 2021, the claimant contacted TPI regarding production work in Newton. The claimant would be unable to perform such work, given her injured condition. The claimant did not make any other job contacts during the week that ended August 21, 2021 and has made no further work search since that time.

REASONING AND CONCLUSIONS OF LAW:

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(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.

...

(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.

The claimant has been unable to work and unavailable to work since she established the original claim that was effective August 8, 2021. Since that time, the claimant has been dealing with significant, unresolved pain in her right shoulder and wrist. Since being taken off work by a doctor in May 2021, the claimant has not been released to return to any type of work. The claimant is not eligible for unemployment insurance benefits. Benefits are denied effective August 8, 2021. The able and available disqualification will continue until the claimant provides competent evidence that she had been released by a doctor to return to work and until the claimant otherwise demonstrates that she is able and available for work. The claimant must meet all other eligibility requirements.

DECISION:

The September 23, 2021, reference 02, decision is affirmed. The claimant has not been able to work and has not been available for work since she established the August 8, 2021 original claim. Benefits are denied effective August 8, 2021. The able and available disqualification will continue until the claimant provides competent evidence that she had been released by a doctor to return to work and until the claimant otherwise demonstrates that she is able and available for work. The claimant must meet all other eligibility requirements.



James E. Timberland
Administrative Law Judge

January 5, 2022
Decision Dated and Mailed

jet/scn