

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ELIZABETH M EBERLY
Claimant

THE UNIVERSITY OF IOWA
Employer

APPEAL 14A-UI-10990-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/07/14
Claimant: Appellant (1)

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 October 10, 2014, (reference 01) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on November 12, 2014. Claimant participated. Employer participated through benefits specialist Mary Eggenburg and nurse manager, Don Swanson.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full-time as a psychiatric nursing assistant and was separated from employment on August 7, 2014. She attempted to return for a partial shift on August 15 and was unable to work because of exposure to tuberculosis and exhausted her sick and vacation days on September 5, 2014. She returned to work on October 16, 2014. The medication has side effects and gave her vertigo, nausea, and cramps. The work-relatedness of the condition is disputed and the employer has been unable to identify a source of the infection. Her treating doctors, Godo and Appenheimer, said she was not capable of doing her regular duties. She was released for three days per week, eight hours per day for one week of October 13. She was released without restriction on October 20. She declined to testify about the work-relatedness.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work.

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.

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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Regardless of whether the medical condition was work-related or not, since claimant did not provide a release with or without restrictions until the week of October 12,

she was not able to work before then. Since the employer provided accommodation and allowed her to work all of the hours medically authorized, she was not otherwise able to work that week. Because she returned to her regular job duties and hours during the week of October 19, claimant was no longer considered unemployed effective October 19.

DECISION:

The October 10, 2014, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective September 7, 2014. Benefits are withheld. Claimant was no longer unemployed when she returned to work to the extent medically authorized effective October 12, and without restriction effective October 19, 2014.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs