

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CHRISTY L PRITCHARD  
5305 TWANA DR APT 16  
DES MOINES IA 50310-1463

GOODWILL INDUSTRIES OF CENTRAL  
IOWA INC  
4900 NE 22<sup>ND</sup> ST  
DES MOINES IA 50313

Appeal Number: 04A-UI-04555-RT  
OC: 04-04-04 R: 02  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Required Findings (Able and Available for Work)

STATEMENT OF THE CASE:

The claimant, Christy L. Pritchard, filed a timely appeal from an unemployment insurance decision dated April 19, 2004, reference 03, denying unemployment insurance benefits to her. After due notice was issued, a telephone hearing was held on May 10, 2004 with the claimant participating. DeAnne Hamilton, Retail Coordinator, participated in the hearing for the employer, Goodwill Industries of Central Iowa, Inc. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Claimant's Exhibit A was admitted into evidence.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Claimant's Exhibit A, the administrative law judge finds: The claimant was separated from the employer on April 5, 2004. A decision on that separation dated April 19, 2004, reference 01, allowed unemployment insurance benefits. That issue and that decision is not now before the administrative law judge. The claimant had hand surgery on April 8, 2004 and initially, prior to the surgery, her physician had indicated that the claimant would be off work one week and then could return to work but would not be able to use her right hand. This patient status report was dated April 5, 2004 and appears at Claimant's Exhibit A. The claimant's physician then completed another patient status report on April 20, 2004 indicating that it would be three to six weeks before the claimant could do full duty. That patient status report indicated that the claimant would have another appointment in two weeks. The claimant has not seen the doctor since April 20, 2004 but has a doctor's appointment next week. At some point the claimant spoke to the employer and said that she would be able to return to work one week after her surgery. Her employer at the time, Goodwill Industries of Central Iowa, Inc., told the claimant that they would need a doctor's release to return her to work. The claimant has not yet furnished such a doctor's release. The claimant testified that she is no longer wearing a hand brace and has placed no restrictions on the use of her hand herself but concedes that she cannot lift heavy objects with her right hand and that she has not been released to use her right hand in this regard.

The claimant has placed restrictions on her availability for work from 9:00 a.m. to 5:00 p.m. Monday through Friday, which was what she was working when she was employed with the employer. The claimant is seeking work by making two in-person job contacts each week.

#### REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the claimant is ineligible to receive unemployment insurance benefits because she is and was at material times hereto not able, available, and earnestly and actively seeking work. The claimant is ineligible to receive unemployment insurance benefits because she is and was, at material times hereto, not able to work.

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".

871 IAC 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.

The administrative law judge concludes that the claimant has the burden of proof to show that she is able, available, and earnestly and actively seeking work under Iowa Code Section 96.4-3 or is otherwise excused. New Homestead vs. Iowa Department of Job Service, 322 N.W.2d 269 (Iowa 1982). The administrative law judge concludes that the claimant has failed to meet her burden of proof to demonstrate by a preponderance of the evidence that she is able to work and has not demonstrated any evidence that she is excused from such provisions. There is no evidence that the claimant is temporarily unemployed or partially unemployed so as to excuse her from the provisions that require her to be able, available, and earnestly and actively seeking work. The claimant offered Claimant's Exhibit A which is two patient status reports. The first one dated April 5, 2004 states that the claimant was scheduled for surgery on April 8, 2004 and would be off one week and then could return to work but would have no use of her right hand. According to this report, in no way would the claimant be able to work until April 15, 2004 and since that is in the last half of the week the claimant would not be eligible for benefits through and including benefit week ending April 17, 2004. However, a second patient status report dated April 20, 2004 states that it will be three to six weeks before the claimant can do full duty. The administrative law judge must assume that this further restriction is related to the use of her right hand since the prior patient status report indicates that the claimant can return to work but no use of her right hand. There is no evidence at all that the claimant can use her right hand in any fashion except the claimant's testimony but that is not confirmed by the two patient status reports. According to the second patient status report dated April 20, 2004, the soonest the claimant would be able to use her right hand and be able to work would be May 11, 2004, which would begin three weeks. The claimant might be entitled to unemployment insurance benefits for benefit week ending May 15, 2004 if the doctor would indicate that she was able to work on May 11, 2004. According to the patient status report dated April 20, 2004, the claimant was to see the doctor in two weeks. The claimant did not do so. If the claimant had done so it may well be that the claimant would have evidence that she was able to work. However, under the doctor's reports, which are Claimant's Exhibit A, the administrative law judge is constrained to conclude that there is not a preponderance of the evidence that the claimant is, as yet, able to work. The claimant testified that she is no longer wearing a hand brace and has placed no restrictions on her work but then later testified that she cannot lift heavy objects with her right hand and in that regard has not been released. The administrative law judge must conclude on the basis of the doctor's reports that the claimant's inability to use her right hand does unreasonably impede her ability to work and that she is not yet able to work. The claimant has placed restrictions on her ability to work from 9:00 a.m. to 5:00 p.m. Monday through Friday but

since these were the hours the claimant was working prior to her separation from her employer, the administrative law judge concludes that this restriction does not unreasonably impede or restrict the claimant's employment. Claimant also testified that she is earnestly and actively seeking work by making two in-person contacts per week.

Accordingly, under the evidence here, the administrative law judge is constrained to conclude that the claimant is not able to work and, as a consequence, she is ineligible to receive unemployment insurance benefits. Unemployment insurance benefits are denied to the claimant until she can demonstrate that she is able to work. Perhaps when the claimant sees her doctor next week she will be able to provide such evidence.

**DECISION:**

The representative's decision of April 19, 2004, reference 03, is affirmed. The claimant, Christy L. Pritchard, is not entitled to receive unemployment insurance benefits until or unless she demonstrates that she is able to work and is otherwise eligible to receive unemployment insurance benefits.

tjc/kjf