

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STACEY J MORSE
Claimant

BRANDFX LLC
Employer

APPEAL 18A-UI-00338-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/22/17
Claimant: Appellant (2)

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 January 5, 2018, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on February 1, 2018. The claimant, Stacey Morse, participated. The employer, BrandFX, L.L.C., participated through Tammy Birchard, HR Manager.

ISSUE:

Is the claimant able to work and available for work effective October 22, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as an assembler, from June 20, 2017, until October 17, 2017, when her employment ended. Claimant had been on leave for the two weeks prior to her employment ending due to an injury. Since early October, claimant was restricted to working light duty and could not lift more than five pounds with her right arm. The employer did not have any light duty work available. Claimant's light-duty work restriction lasted for one month.

Claimant has been actively seeking employment since she separated from this employer. Claimant has experience doing CNA work and has applied for jobs in the healthcare field. She has also applied for administrative assistant positions, factory positions that do not require the use of air tools, and positions with the United States Postal Service. Claimant does not have any current restrictions on her employability.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant able to work and available for work for the period in question. Benefits are allowed.

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. 871-24.22(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.

In this case, claimant had a temporary restriction from lifting over a certain weight with her right arm. Additionally, based on the advice from her orthopedist, claimant is likely restricted from using air tools. Claimant has been actively and earnestly seeking employment that does not require the use of air tools. She has been applying for jobs for which she is qualified and either

has experience or for which experience is not required. Accordingly, claimant is able to work and available for work. Benefits are allowed.

DECISION:

The January 5, 2018, (reference 03) unemployment insurance decision is reversed. Claimant is able to work and available for work effective October 22, 2017. Benefits are allowed.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn