

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JODI A LHOTKA

Claimant

APPEAL 18A-UI-03237-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARROLL CO ASSESSOR

Employer

OC: 02/11/18

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 2, 2018, (reference 03) unemployment insurance decision that denied benefits based upon not being able to or available for work effective February 11, 2018. The parties were properly notified about the hearing. A telephone hearing was held on April 5, 2018. Claimant participated. Employer did not respond to the hearing notice instruction by registering for the hearing and did not participate.

ISSUE:

Is the claimant able to work and available for work effective February 11, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: After her separation from employment on February 5, 2018, she was able to work until she was under medical care and not able to work between Monday, February 26, 2018, and Thursday, March 15, 2018, when she was released to work. (Claimant's Exhibit A) Her vacation pay was accurately reported.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work between Monday, February 26, 2018, and Thursday, March 15, 2018.

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.
(Emphasis added.)

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.

Inasmuch as the claimant was under medical care between Monday, February 26, 2018, and was released to work on Thursday, March 15, 2018, she is not considered able to work during that time period. She was able to work from February 11, 2018, through the week-ending February 24, 2018. Because the treating medical professional released her to return to work at the end of the week, effective March 24, 2018, she has established ability to work as of that date.

DECISION:

The March 2, 2018, (reference 03) unemployment insurance decision is modified in favor of the appellant. She was unable to work between Monday, February 26, 2018, and Thursday, March 15, 2018. The claimant is able to work and available for work from February 11, 2018, through the week-ending February 24, 2018, and again effective March 17, 2018. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs