

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SAMANTHA G DOTY
Claimant

APPEAL NO. 16A-UI-12780-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES-BURLINGTON INC TE
Employer

OC: 05/22/16
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Temp Associates-Burlington Inc TE filed a timely appeal from a representative's decision dated November 22, 2016, (reference 05) that held the claimant was eligible to receive unemployment insurance benefits beginning October 30, 2016, finding the claimant to be able and available for work as of October 30, 2016. After due notice was provided, a telephone hearing was held on December 16, 2016. Claimant participated. The employer participated by Ms. Jane Brown, Account Manager.

ISSUE:

Whether the claimant is able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Samantha Doty began employment with Temp Associates-Burlington Inc TE on August 9, 2016. Claimant was assigned to work as a medical receptionist for Medical Associates and was paid by the hour. The claimant's assignment came to an end on November 1, 2016 by request of the client employer because Ms. Doty was missing work during training due to a medical issue.

The claimant was diagnosed with melanoma. Because of the medical condition, Ms. Doty was required to take time away from work for medical treatments and at one juncture was off work for approximately two weeks for recovery. As time progressed, the claimant's need to be absent from work for medical reasons has lessened. Since opening her claim for unemployment insurance benefits, the claimant is actively and earnestly seeking employment in both full-time and part-time capacities, of the type that she is able to perform.

It is the employer's position that the number of medical appointments required by the claimant's medical condition has effectively removed her from the labor market because the claimant is not able or available for work.

REASONING AND CONCLUSIONS OF LAW:

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".

The question before the administrative law judge is whether the evidence of the record establishes that Samantha Doty has been able and available for work since establishing her claim for benefits.

An otherwise eligible claimant is eligible to receive benefits with respect only if the evidence indicates the individual is able to work, is available for work, and is earnestly and actively seeking work. See Iowa Code Section 96.4(3) and 871 IAC 24.22. The claimant bears the burden to establishing the claimant meets the above requirements. See 871 IAC 24.22.

To satisfy the able requirement of the law 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 in engaged by others as a means of livelihood. See 871 IAC 24.22(1). With regard to illness or injury, each case is decided upon an individual basis recognizing that various work opportunities present different physical requirements. See 871 IAC 24.22(1)a. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required, the statement is sufficient to establish the claimant's physical ability unless disproved by other evidence.

To satisfy the availability requirement, an individual must be able and ready to accept suitable work which the individual does not have good cause to refuse. The individual must be genuinely attached to the labor market. Since under unemployment insurance law, it is the availability of the 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 type of service which the individual offers in the geographical area in which the individual offers the service. Market does not mean the job vacancy must exist. The purpose of unemployment insurance is to compensate for lack of job vacancies. It means currently the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering services.

The administrative law judge finds that the statement from the claimant's doctor that she can resume full-time employment is prima facie evidence of her ability to perform work in the general labor market. The evidence establishes that she willing and ready to accept work and that she is genuinely attached to the labor market. Accordingly, the claimant is held to be able and available for work within the meaning of the Employment Security Act and eligible to receive unemployment insurance benefits, provided she meets all eligibility requirements each week that she claims unemployment insurance benefits.

DECISION:

A representative's decision dated November 22, 2016, (reference 05), is affirmed. Claimant is eligible to receive unemployment insurance benefits beginning October 30, 2016 as long as she has met all of the eligibility requirements. Claimant is available in the general labor market and is able and available to work within the meaning of the law.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs