

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PATRICIA MARKS**  
Claimant

**APPEAL NO: 10A-UI-17886-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HEALTH SERVICES - IOWA CORP**  
Employer

**OC: 11/14/10**  
**Claimant: Respondent (1)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Mercy Health Services – Iowa Corporation (employer) appealed an unemployment insurance decision dated December 20, 2010, reference 05, which held that Patricia Marks (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 22, 2011. The claimant participated in the hearing with Attorney Natalisa Blasovich. The employer participated through Angela Faber and Glenna O'Conner of Human Resources. Employer's Exhibit One was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is able and available to work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a part-time activities coordinator in skilled rehabilitation from November 30, 2007 through November 15, 2010. She sustained a non-work-related injury on May 9, 2010 and was taken off work on August 23, 2010 for surgery. The currently has a ten-pound lifting restriction on her right arm.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. For the following reasons, the administrative law judge concludes she is.

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".

871 IAC 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.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She currently has a ten-pound lifting restriction. This restriction does not prevent her from working in many jobs. The claimant meets the availability requirements of the law and qualifies for benefits, provided she is otherwise eligible.

**DECISION:**

The unemployment insurance decision dated December 20, 2010, reference 05, is affirmed. The claimant meets the availability requirements of the law and qualifies for benefits, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs