

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY E GRAVEL
Claimant

APPEAL NO: 14A-UI-04539-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRANSAMERICA LIFE INSURANCE
Employer

**OC: 03/30/14
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's April 22, 2014 determination (reference 02) that held her ineligible to receive benefits as of March 30, 2014, because she was unable to work as the result of a medical issue. The claimant participated at the May 20 hearing. The employer responded to the hearing notice by providing the name of the employer's witness and a phone number to contact the employer's witness. The employer was called and a message was left for the witness to contact the Appeals Bureau if she was going to participate at the hearing. The employer's witness did not return the administrative law judge's call.

Based on the evidence, the claimant's arguments, and the law, the administrative law judge concludes that as of March 30, the claimant is not eligible to receive benefits because she has not been released to work by her physician and is looking for a tailor-made job to fit her work restrictions.

ISSUE:

As of March 30, 2014, is the claimant able to and available for work and eligible to receive benefits?

FINDINGS OF FACT:

The claimant started working for the employer in June 2010. She worked as a full-time compliance associate. The claimant's job required her to sit at a desk to do computer work for an extended time. The claimant has a disability that causes her to have migraines and pain when she sits for extended periods.

The claimant worked for the employer until late February 2014. In late February 2014 the claimant's physician restricted her from working. The claimant's physician reported that her return to work date had yet to be determined.

The employer discharged the claimant on April 1, 2014. As of April 1, 2014, the claimant's physician had not released her to return to work. After the claimant established a claim for benefits, she has been looking for work where she has the flexibility to stand or sit as she needs

to. The claimant has decided to do childcare in her home so she has the flexibility she needs with her disability. The claimant has filed claims for the weeks ending April 5 through May 24, 2014.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work before she is eligible to receive benefits. Iowa Code § 96.4(3). The law presumes a claimant is not available for work when a claimant is under a physician's care and her physician has not released her to work. 871 IAC 24.23(35). Even if the claimant presents the Department with a doctor's statement indicating the date her physician released her to work, the law also presumes a claimant is not eligible for benefits when her availability for work is unduly limited because she is not willing or is unable to accept work in her usual occupation and failed to establish what other types of meaningful work she can perform. 871 IAC 24.23(19). Also, the law presumes a claimant is not eligible if she devotes time and effort to becoming self-employed. 871 IAC 24.23(7).

The claimant acknowledged she is unable to do her previous job because she cannot sit for an extended time to do computer work. The claimant came to the conclusion that with the flexibility she needs to be able to sit and stand as needed she would be self-employed and work as a childcare provider in her home. As a result of the claimant's work restrictions, she is looking for a tailor-made job and has decided to become self-employed. As a result, she is not eligible to receive benefits as of March 30, 2014.

DECISION:

The representative's April 22, 2014 determination (reference 02) is affirmed. As of March 30, 2014, for unemployment insurance purposes, the claimant is not available for work and ineligible to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs