

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**VALERIE RAUB**  
Claimant

**APPEAL 17A-UI-12718-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRUNCKS COUNTRY FOODS INC**  
Employer

**OC: 11/12/17  
Claimant: Appellant (1)**

---

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 November 29, 2017, (reference 02) unemployment insurance decision that denied benefits based on her inability to work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on January 25, 2018. The claimant participated and testified. The employer participated through owner Darren Trunck.

**ISSUE:**

Is the claimant able to work and available for work effective November 12, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a produce manager from October 1, 2015, until this employment ended on November 9, 2017, when she was discharged for excessive unexcused absenteeism. Claimant testified, while she was still working for this employer she suffered a back injury. Claimant currently is being treated for her injury and has a 20 pound lifting restriction. Claimant has been applying for work in kitchens in nursing homes and assisted living facilities, as well as for physical therapy positions in such facilities. Claimant testified she has kitchen experience, but does not have any training, licensing, or certifications for physical therapy.

**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, effective November 12, 2017.

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.

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. 871-24.23(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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. Claimant has suffered a back injury and has a 20 pound lifting restriction. Claimant's employment with this employer ended on November 9, 2017 for reasons unrelated to her injury. Since the employment ended on November 9, 2017, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. The only jobs claimant testified she had applied for are those working in the kitchen in nursing and assisted living facilities, as well as those performing physical therapy in these types of facilities. Claimant testified she has experience working in kitchens, but currently has a 20 pound lifting restriction. It is difficult to imagine a kitchen position in a facility, like a nursing home or assisted living center, charged with preparing and serving mass quantities of food, that would not require one to lift more than 20 pounds. Furthermore, claimant testified she has no training, licensing, or certifications to provide physical therapy services. Claimant has not established the type of work for which she has been applying is reasonably likely to lead to employment given her experience, education, work history, and work restrictions. Benefits are withheld until such time as claimant obtains a medical release to return to some type of work of which she is capable of performing given any medical restrictions, provided she is otherwise eligible at that time.

**DECISION:**

The November 29, 2017, (reference 02) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective November 12, 2017. Benefits are withheld.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/rvs