

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MICHELLE M CLARK**  
Claimant

**BROOKS PARK RESORT LLC  
LEDGESTONE HOSPITALITY**  
Employer

**APPEAL NO. 19A-UI-10190-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/01/19  
Claimant: Appellant (4R)**

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Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.19(38) – Partial Unemployment

**STATEMENT OF THE CASE:**

Michelle Clark filed a timely appeal from the December 20, 2019, reference 03, decision denied benefits effective December 1, 2019, based on the deputy's conclusion that Ms. Clark was unable to perform work and therefore also was not available for work within the meaning of the law. After due notice was issued, a hearing was held on January 21, 2020. Ms. Clark participated. Heather Ellis represented the employer. Exhibits 1 through 6 were received into evidence. Exhibits 1 through 6 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO, and WAGE-A.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Brooks Park Resort, L.L.C./Ledgestone Hospitality operates a hotel in the Okoboji area. Michelle Clark is a full-time employee who has primarily been assigned to perform front desk duties since the start of the employment. The front desk duties include washing, drying and folding laundry. The front desk duties include assisting guests with issues, including room key issues and/or other issues that would require Ms. Clark to climb stairs to assist the guest. Room key issues generally arose twice per week. The workplace lacks an elevator. The front desk duties included assisting with breakfast and washing breakfast dishes. During the peak/summer season, Ms. Clark is also assigned to assist part-time with housekeeping duties. Heather Ellis is the hotel manager and Ms. Clark's supervisor. Ms. Clark has primarily been assigned to work shifts that begin at 2:00 p.m. and that end at 10:00 p.m., but has also frequently been assigned to work 6:00 a.m. to 2:00 p.m. Ms. Clark would be assigned to work alone on the evening shifts. For the morning to afternoon shift, another staff member would often be scheduled to assist at the front desk. Prior to October 21, 2019, Ms. Clark usually worked 35 and 40 hours per week. Ms. Clark's wage is \$10.75 per hour.

On September 30, 2019, Ms. Clark provided Ms. Ellis a medical note from an orthopedic surgeon. The note indicated that Ms. Clark would undergo surgery on October 21, 2019, would need one week off to recover from the surgery, and would thereafter need to avoid housekeeping duties for an additional one to two weeks. Ms. Clark's last day worked prior to her surgery was October 20, 2019. Ms. Clark then began an approved medical leave. On October 21, 2019, Ms. Clark underwent surgery to remove a bunion on her left foot. The surgery included scraping a bone in Ms. Clark's foot. Ms. Clark continued off work pursuant to doctor's advice until a follow-up appointment on November 4, 2019.

On November 4, 2019, Ms. Clark provided Ms. Ellis with another medical note from the orthopedic surgeon. The note indicated that Ms. Clark could return to work with restrictions. The note restricted Ms. Clark from using the stairs and from performing housekeeping duties for two weeks. The note indicated that Ms. Clark could work at the front desk and could perform breakfast duties. The note indicated that Ms. Clark could perform laundry duties "as tolerated." The note indicated that Ms. Clark would have a follow-up medical appointment in two weeks.

At the time Ms. Clark provided her November 4 note to Ms. Ellis, Ms. Ellis had already prepared and posted the schedule for the work week that began on Monday, November 4 and that would end on Sunday, November 10. Ms. Ellis had not scheduled Ms. Clark to work that week, but amended the posted schedule to give Ms. Clark three 7:00 a.m. to 1:00 p.m. shifts. When Ms. Clark returned to work, she was in an orthopedic walking boot and brought crutches with her to use as needed. Ms. Ellis scheduled Ms. Clark only for day shifts during that week and subsequent weeks so that a second employee would be available to assist Ms. Clark as needed. Ms. Clark worked the first two scheduled shifts, but was absent on Monday, November 10 due to the flu.

When Ms. Ellis prepared the work schedule for the work week that started on Monday, November 11 and that ended on Sunday, November 17, she scheduled Ms. Clark to work five shifts, totaling 35 hours. Ms. Clark worked three of the shifts, but missed two others due to the flu.

When Ms. Ellis prepared the work schedule for Monday, November 18 through Sunday, November 24, she scheduled Ms. Clark to work four 7:00 a.m. to 1:00 p.m. shifts that provided a total of 24 hours of work. Ms. Clark had requested Wednesday, November 20 off for a medical appointment. Ms. Ellis granted the request and did not schedule Ms. Clark to work on that day.

By November 20, 2019, Ms. Clark, Ms. Ellis and Ms. Clark's doctor determined that Ms. Clark was not physically able to perform the laundry duties. By that time, Ms. Clark's doctor suspected that Ms. Clark had a stress fracture in her left foot. Ms. Clark provided Ms. Ellis with a medical note that restricted her from performing laundry duties, housekeeping duties, and duties that involved stairs. The medical note further indicated that Ms. Clark was to sit down as needed to prevent stress to the surgical site the possible stress fracture. Ms. Clark was at that point essentially restricted to performing partially-sedentary front desk duties. Ms. Clark continued under the same medical restrictions until December 31, 2019.

When Ms. Ellis prepared the work schedule for Monday, November 24 through Sunday, December 1, she scheduled Ms. Clark to work four 7:00 a.m. to noon shifts that provided a total of 20 hours. Ms. Clark worked three of the shifts, but was absent due to illness from the fourth shift.

Ms. Clark established an original claim for unemployment insurance benefits that was effective December 1, 2019. Ms. Clark established the claim in response to the decrease in her

scheduled work hours. Iowa Workforce Development set Ms. Clark's weekly benefit amount at \$261.00.

When Ms. Ellis prepared the work schedule for Monday, December 2 through Sunday, December 8, she scheduled Ms. Clark for three 8:00 a.m. to noon shifts that provided 12 hours of work. Ms. Clark had requested Wednesday, December 4 off for a physical therapy appointment. Ms. Clark worked the three scheduled shifts for which she was paid \$129.00 in gross wages. The three worked shifts all fell within the unemployment insurance benefit week that ended on December 7, 2019. Ms. Clark reported \$131.00 in wages when she made her weekly unemployment insurance claim for the week that ended December 7.

During the benefit week of Sunday, December 8 through Saturday, December 14, 2019, the employer scheduled Ms. Clark to work two shifts. Those shifts were from 8:00 a.m. to noon on Friday, December 13 and Saturday, December 14. Ms. Clark was absent from both scheduled shifts. Ms. Clark had no wages for the week and reported zero wages when she made her weekly claim for the week that ended December 14, 2019.

During the benefit week of Sunday, December 15 through Saturday, December 21, 2019, the employer scheduled Ms. Clark to work four shifts that started at 8:00 a.m. and that ended at noon. The four shifts provided Ms. Clark with 16 hours of work and \$172.00 in wages. Ms. Clark worked all of the scheduled hours. Ms. Clark reported \$181.00 in wages when she made her weekly claim for the week that ended December 21.

During the benefit week of Sunday, December 22 through Saturday, December 28, 2019, the employer scheduled Ms. Clark to work for shifts that provided 18 hours of work and \$193.50 in wages. Two of the shifts ran from 8:00 a.m. to noon. The other two shifts ran from 3:00 p.m. to 8:00 p.m. Ms. Clark worked all of the scheduled hours. Ms. Clark reported \$202.00 in wages when she made her weekly claim for the week that ended December 28.

During the benefit week of Sunday, December 29, 2019 through Saturday, January 4, 2020, the employer scheduled Ms. Clark to work four shifts that provided 17 hours of work and \$182.75 in wages. Three of the shifts ran from 8:00 a.m. to noon. The fourth shift ran from 8:00 a.m. to 1:00 p.m. Ms. Clark worked all of the scheduled hours. Ms. Clark reported \$191.00 in wages when she made her weekly claim for the week that ended January 4.

Effective December 31, 2019, Ms. Clark was released to perform all her usual work duties except for housekeeping duties. Ms. Clark promptly provided the medical release to Ms. Ellis.

The benefit week that ended started on January 5 and that ended on January 11, 2020 is the last benefit week for which there had been a weekly claim at the time of the appeal hearing. During that week, the employer scheduled Ms. Clark to work four shifts that provided 24 hours of work and \$258.00. Two of the shifts ran from 8:00 a.m. to noon. The other two ran from 2:00 p.m. to 10:00 p.m. Ms. Clark worked all of the scheduled hours. Ms. Clark reported \$326.00 in wages when she made her weekly claim for the week that ended January 11.

#### **REASONING AND CONCLUSIONS OF LAW:**

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. ...

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. ...

Iowa Admin. Code r. 871-24.23(1), (29) and (35) 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.

...

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

...

(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 shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b).

An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993).

The weight of the evidence in the record establishes that Ms. Clark was not able to work or available for work within the meaning of the law at the time she established the unemployment insurance claim that was effective December 1, 2019. Because Ms. Clark was employed at the time she filed her claim for benefits, she needed to be able to perform her duties with reasonable accommodations to meet the unemployment insurance work ability requirement. Because Ms. Clark's unemployment insurance benefit eligibility is based on a history of full-time employment, she needed to be available for full-time employment to meet the work availability requirement. The evidence in the record establishes that Ms. Clark was not able to work and available for work within the meaning of the law during the four benefit weeks between December 1, 2019 and December 28, 2019. During that time, Ms. Clark had significant non-work related medical restrictions that severely limited the type of work she could do. Ms. Clark is not eligible for benefits for the four weeks between December 1, 2019 and December 28, 2019.

The weight of the evidence establishes that Ms. Clark was able to work and available for work within the meaning of the law as of December 31, 2019, when her doctor released her to return to all duties except housekeeping. Given that the release came during the winter season, rather than during the peak/summer season, Ms. Clark's inability to perform the designated housekeeping duties would have minimal impact. During the weeks that ended January 4 and January 11, 2020, Ms. Clark remained able to perform full-time work and available for full-time work, but the employer elected not to provide full-time work. Ms. Clark's actual wages for both weeks were less than her weekly benefit amount. Ms. Clark was partially unemployed during the weeks that ended January 4 and January 11, 2020 and is eligible for benefits for those two weeks, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for those two weeks.

This matter will be remanded to the Benefits Bureau for determination of whether Ms. Clark was able to work, available for work, and/or partially unemployed for the period beginning January 12, 2020.

**DECISION:**

The December 20, 2019, reference 03, is modified in favor of the claimant as follows. The claimant was not able to work or available for work within the meaning of the law during the four weeks between December 1, 2019 and December 28, 2019. The claimant is not eligible for benefits for those two weeks. The claimant was able to work, available for work, and partially unemployed during the two-week period of December 29, 2019 through January 11, 2020. The claimant is eligible for benefits for those two weeks, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for those two weeks. For purposes of determining the claimant's weekly benefit amount for the week that ended January 11, 2020, the claimant's wages for that week were \$258.00.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/scn