

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRIE M GRAHAM
Claimant

APPEAL NO. 14A-UI-07083-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

K G B INC
Employer

OC: 06/15/14
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 3, 2014 (reference 02) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on July 29, 2014. The claimant did participate. The employer did not participate.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed full time as a sandwich artist beginning on May 7, 2006 through date of hearing, as she remains an employee. The claimant is off on a medical leave granted by the employer as she deals with her non-work-related diverticulitis condition. Her treating surgeon, Dr. Wageman has indicated she is not currently able to work. The claimant is slated to undergo another surgical procedure in September to reverse her Hartman's procedure that resulted in a colostomy bag. She cannot work around food at this time due to her colostomy bag. The claimant is just physically not able to work at this time. Once she has physically recovered her employer will put her back to work.

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.

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".

Iowa Admin. Code r. 871-24.22(2)j(1)(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.

j. Leave of absence. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23(10) provides:

(10) The claimant requested and was granted a leave of absence; such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant requested and has been given a leave of absence to recover from her diverticulitis. Neither she, nor her treating surgeon, believe she is capable of working right now due to her work restrictions and the colostomy bag she now must have until she heals. Accordingly, benefits must be denied.

DECISION:

The July 3, 2014 (reference 02) decision is affirmed. The claimant is not able to work and available for work effective May 27, 2014. Benefits are withheld until such time as the claimant makes recovery and is released to return to work by her treating physician.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/can