

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERESIAH W MUCHEMI
Claimant

APPEAL NO: 14A-UI-05692-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CALVIN COMMUNITY
CALVIN MANOR**
Employer

OC: 05/11/14
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 29, 2014 determination (reference 01) that held her ineligible to receive benefits as of May 11, 2014, because she was unable to work as the result of an injury. The claimant participated at the June 23 hearing. Vicki Wagner, the human resource manager, and Tammy Torstenson, the director of nursing, appeared on the employer's behalf.

Even though the May 29 determination stated the claimant was not able to perform work, the issue on the hearing notice indicated this appeal was a separation issue, but it was not. Since the appeal for 14A-UI-05693-DWT that was scheduled in conjunction with this appeal was based on a May 29, 2014 determination but reference 02, which is identical to reference 01, the parties were informed both reference numbers were identical and they would receive two identical decisions. The parties agreed that while the claimant was not working for medical reasons, she still was considered an employee. As a result, the separation issue listed on this appeal was not addressed because there is no corresponding determination. Based on reference 01, the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is not eligible to receive benefits as of May 11, 2014, because she is unable to work as the result of her current work restrictions.

ISSUE:

Is the claimant able to and available for work as of May 11, 2014?

FINDINGS OF FACT:

The claimant started working for the employer in March 2012. The employer hired her to work as a full-time CNA. The claimant requested and was granted FMLA on January 22, 2014. Even though the claimant's FMLA ended on March 27, 2014, the employer still considers the claimant on a medical leave of absence and has a job for her when she can return to work as a CNA.

The claimant currently has a work restriction and cannot lift more than 20 to 25 pounds. A CNA is required to lift 50 pounds. The claimant wants to work part time at a job that does not require

her to do any lifting. When the orthopedic physician releases the claimant to work, the employer has a job for the claimant.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4(3). Even though the claimant wants to work part time, since she earned her wages credits in full-time employment, she must be able to and available for full-time employment. While I understand the claimant's financial dilemma, her current work restrictions prevent her from working as a CNA. The claimant is currently looking for a tailor-made job. The claimant did not establish that she is able to perform full-time work in which she has experience doing. As of May 11, 2014, the claimant is not eligible to receive benefits because she is not able to work full time at a job that is not tailor made for her.

DECISION:

The representative's May 29, 2014 determination (reference 01) is affirmed. Based on the claimant's work restrictions, the claimant is not able to work at a full-time job that is not tailor made for her and in which she has experience. As of May 11, 2014, the claimant is not eligible to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css