

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBRA J JOHANN**  
Claimant

**APPEAL NO. 12A-UI-06335-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE UNIVERSITY OF IOWA**  
Employer

**OC: 05-06-12**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 25, 2012, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 22, 2012. The claimant did participate. The employer did participate through Mary Eggenburg, benefits specialists, and Ellen Twynam, human resource director.

**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 was employed as a nursing assistant, full-time, beginning October 18, 2010, through date of hearing, as she remains employed. The claimant sustained a work-related injury in May 2011 that left her with work restrictions that include no lifting over 15 pounds, no twisting and bending, and no standing for long periods of time. The employer accommodated her work restrictions by providing her with fill-in clerical or administrative work until May 9, 2012, when they had no additional work for her that also complied with her work restrictions. The claimant is not currently able to perform nursing assistant duties but is able to perform clerical work, computer work, or sit down work that does not require any lifting, twisting, or bending. She demonstrated her ability to perform work within her work restrictions, as she has been working at modified duty for the employer for the last ten months.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is 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".

871 IAC 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.

The claimant has work restrictions that prevent her from returning to work as a nursing assistant. She worked for ten months for the employer performing clerical and data entry duties. While the claimant may not be able to work as a nursing assistant, she has established her ability to work performing other work. Thus, the Administrative Law Judge deems that she is able to and available for work within the meaning of the law. Accordingly, benefits are allowed effective May 6, 2012.

**DECISION:**

The May 25, 2012, reference 01, decision is reversed. The claimant is able to work and available for work effective May 6, 2012. Benefits are allowed.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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