

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA M TRULSON

Claimant

APPEAL 17A-UI-08079-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-IOWA FAMILY THERAPY

Employer

OC: 07/09/17

Claimant: Appellant (4)

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 August 8, 2017, (reference 03) unemployment insurance decision that denied benefits based upon her inability to work due to an injury. The parties were properly notified of the hearing. A telephone hearing was held on August 28, 2017. The claimant participated and testified. The employer participated through Human Resource/Payroll Director Abbey Mertz.

ISSUE:

Is the claimant able to work and available for work effective July 9, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a case worker from April 20, 2017, until this employment ended on July 24, 2017. On July 5, 2017, claimant sustained a non-work related concussion. Claimant was unable to work the remainder of the week due to her injury. On July 10, 2017, claimant was released to return to work, with a restriction of only being able to work for four hours each day for the remainder of that week. On July 17, 2017, claimant was released to work an entire day, but her driving was restricted to a 20 mile radius. That restriction is currently still in effect. As part of claimant's normal job duties she is required to cover, and be available to, a seven county area. Claimant's 20-mile driving restriction reduced the area she was available to cover and she was therefore separated from employment. Claimant testified her driving restriction is the only current restriction on her work and noted she is currently working her part-time job, which she has held since 2006, while looking for permanent full-time work.

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 effective July 16, 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. 871-24.23(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.

Here, the number of hours claimant was able and available for work was significantly limited the week of July 9, 2017 due to her medical condition. However, claimant's treating physician lifted the hours restriction effective Monday, July 17, 2017, leaving only the 20-mile driving radius restriction in place. Claimant was subsequently separated from employment, as the driving restriction left her unable to fulfill job duties specific to this position. Since the employment ended on July 24, 2017, claimant is no longer obligated to return to employer upon full medical release to offer her services. At that point, claimant's ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since claimant has and currently is performing jobs within her driving restriction, she is considered

able to work even if she cannot yet return to a job as most recently performed for employer. Thus claimant is considered as able to work as of July 16, 2017.

DECISION:

The August 8, 2017, (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant is not able to work and available for work the one week period beginning July 9, 2017, but is able to and available for work beginning July 16, 2017. Benefits are denied for the week of July 9, 2017, but allowed beginning July 16, 2017, provided claimant is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs