

UNEMPLOYMENT INSURANCE APPEALS

TRACI MALCHOW
Claimant

DIAMOND JO WORTH LLC
Employer

APPEAL NO. 17A-UI-08533-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/09/17
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 14, 2017 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 7, 2017. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: All findings of fact are derived from claimant's testimony as employer did not participate in the hearing. Claimant worked as a cook for employer. Claimant was injured at the job on May 8, 2016. Claimant injured her thumb and her back. She worked for a period of time in a light duty job that didn't require for her to stand. Eventually, in September or October of 2016, claimant was told by employer that they had no light duty work for claimant.

In May of 2017, claimant stated that employer's doctor told employer that claimant was able to return to work without restrictions. Claimant stated that she didn't believe that she was able to return at that time. Claimant did not produce any documentation stating that she was not able to return to work, but stated that she is not able to do her job. She additionally stated that she has called employer repeatedly asking that they put her back to work, but to date employer has not done so.

REASONING AND CONCLUSIONS OF LAW:

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(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 physician and has not been released as being able to work.

Claimant in this matter was injured while at work. After employer had allowed claimant to work at a light duty job for an extended period of time, said job was removed, and claimant was placed on workers' compensation. Employer had work available for claimant for a period of time, and employer unilaterally removed claimant from the light duty work.

Claimant stated that she has called employer repeatedly in the last few weeks offering to work, but employer did not return those calls and did not offer work to claimant. Claimant is deemed to have been able and available to return to work when she started contacting employer announcing her availability to return to work. Unfortunately, claimant did not know the date when she started making the calls and requesting a return to work, but simply stated it was within the last couple of weeks. As such, the administrative law judge will determine that the date of claimant's readiness to return to work was August 24, 2017 or two weeks before the hearing date.

DECISION:

The decision of the representative dated August 14, 2017, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective August 24, 2017, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn