

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE L FISTER
Claimant

APPEAL NO: 15A-UI-07135-LDT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 06/15/14

Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jamie L. Fister (claimant) appealed a representative's June 12, 2015 decision (reference 05) that concluded she was not eligible to receive unemployment insurance benefits because she was not able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 28, 2015. This appeal was consolidated for hearing with one related appeal, 15A-UI-07134-LDT. The claimant participated in the hearing. Ajah Anderson of Corporate Cost Control appeared on behalf of Hy-Vee, Inc. (employer), and presented testimony from one Witness, Dale Mitchell. Two other Witnesses, Austin Bryant and Megan Ruden, were available on behalf of the employer but did not testify. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

OUTCOME:

Affirmed. Benefits denied until the claimant becomes able and available for work.

FINDINGS OF FACT:

The claimant started working for the employer on October 6, 2013. She worked part time (30 -32 hours per week) as a kitchen clerk in the employer's Webster City, Iowa store. Her last day of work was October 6, 2014. She advised the employer on that date that she needed to be off work for an indefinite period of time due to a medical issue. The employer agreed that she could be off work, but that she should let the employer know when she again became available for work. There were no requirements placed on her as to how frequently she would otherwise need to check in with the employer. She did informally keep the employer advised as to her status, usually through contact with her kitchen manager, such as advising him in December 2014 that she would have back surgery in February 2015, and indicating to him in late March or early April 2015 that she was still recovering.

The employer attempted to contact her in late April or early May to inquire as to her status, but was unable to reach her as the kitchen manager had not passed on to the employer the claimant's change in phone number. Because the claimant had been off work for so long, the employer discharged as an active employer on or about May 1, 2015.

On or about mid-May the claimant spoke with the store management on a couple of occasions. She inquired as to whether there would be hours for her when she was released by her doctor, and was told there would be, but that she would need to go through the process of reapplying. The claimant's doctor released the claimant only to go for rehabilitation in about mid-May; as of the date of the hearing in this matter, the claimant's doctor has not released the claimant as able to return to any work.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). "A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required." Rule 871 IAC 24.22(2)1(a). A person is not able and available for work if the claimant is ill or injured and has not been released from a doctor's care as able to return to work. Rule 871 IAC 24.23(1), (6), (34), (35).

As of October 19, 2014, and continuing at least through the date of the hearing the claimant had such physical or medical restrictions that she has not been able to demonstrate that he is able and available for work. Unemployment insurance benefits are not intended to substitute for health or disability benefits. *White v. Employment Appeal Board*, 487 N.W.2d 342 (Iowa 1992). Benefits are denied until such time as the claimant is released by her doctor as able for work, and then makes herself available for work.

DECISION:

The representative's June 12, 2015 decision (reference 05) is affirmed. As of October 19, 2014, the claimant is not able and available for work, and is not eligible to receive unemployment insurance benefits until such time as that status changes.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/mak