

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARILYNN D SCHMIDT**  
Claimant

**APPEAL NO. 10A-UI-03846-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE BLOOD CENTER OF IOWA**  
Employer

**OC: 01/17/10**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated March 2, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 27, 2010. Claimant participated. Although the employer provided the name and telephone number of representative, when that number was dialed voice mail picked up. A detailed message was left on how to participate in the hearing. No one from the employer called during the hearing. The record consists of the testimony of Marilynn Schmidt. Official notice is taken of agency records.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant was employed as a receptionist at its site in Marshalltown, Iowa. The claimant was diagnosed with skin cancer on November 8, 2008. This diagnosis led to numerous treatments. The claimant continued to work despite the effects of those treatments. She did, however, exhaust her Family Medical Leave Act (FMLA) leave. The claimant began chemotherapy injections and asked for short-term disability in October 2009. This request was denied by the employer. On January 13, 2010, the claimant was informed by the employer that her job was eliminated. She was able to work at that time as a receptionist had her job not been eliminated. The claimant is looking for work and believes she could work at a receptionist job. She has a GED and computer skills.

## REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The evidence in this case established that the claimant's job was eliminated by the employer on January 13, 2010. Although the claimant had been undergoing treatment for skin cancer, she testified that if her job had not been eliminated she could have returned to work as of January 13, 2010. The claimant is able to work as a receptionist and has been looking for this type of work. She has a GED and computer skills. The claimant is capable of working, despite her illness. She has skills and experience that indicate she is available for work in her geographic area. The claimant was separated from her employment with the employer through no fault of her own. There is no evidence that the claimant voluntarily quit her job or that she was terminated for misconduct. Benefits are allowed if the claimant is otherwise eligible.

**DECISION:**

The decision of the representative dated March 2, 2010, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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