

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELLE SUTTON
Claimant

APPEAL NO: 18A-UI-02006-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FORT DODGE COMMUNITY SCHOOL DIST
Employer

OC: 07/02/17
Claimant: Appellant (4)

Iowa Code § 96.4(3)a – Able and Available

STATEMENT OF THE CASE:

Ms. Melle Sutton, the claimant, filed an appeal from the February 8, 2018, reference 03 representatives unemployment insurance decision that denied benefits as of January 21, 2018, finding that the claimant was unduly limiting her availability for work and therefore did not meet the availability requirements of the law, denying benefits effective January 21, 2018. After due notice was provided, a telephone hearing was held on March 9, 2018. Claimant participated. The employer participated by Ms. Adriana Utley, Administrative Assistant and Mr. Robert Hughes, Assistant Superintendent.

ISSUE:

Whether the claimant was able and available for work within the meaning of the Iowa Employment Security law.

Whether the claimant limited her availability for work.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Ms. Sutton was employed by the Fort Dodge Community School District beginning on July 11, 2017. Ms. Sutton was employed as a full-time administrative assistant for the school district and was paid by the hour.

Ms. Sutton suffered a stroke on September 13, 2017. The claimant was off work for an extended period under the provisions of the Family Medical Leave Act (FMLA).

On December 13, 2017, Ms. Sutton was released by her physician to return to work part-time. She was limited by her doctor to working no more than four hours per day, and lifting no more than 20 pounds. The claimant also had limitations on bending, lifting, stooping and standing. The Fort Dodge Community School District made attempt to accommodate Ms. Sutton's limitations by assigning the claimant to work first in the schools copy department and subsequently assigned her to work in the position of a attendance secretary. The attempts to accommodate Ms. Sutton were not successful because the copy department work conflicted

with her medical limitations and the attendance secretary assignment required full-time employment.

Ms. Sutton was aware of the limitations that were imposed by her physician because of her non-work related injury. Ms. Sutton had been hired to work full-time, and had worked full-time during her base period of employment. Due to her medical limitations because the non-work related illness or injury she was not able to work the number of hours required in her occupation.

Ms. Sutton's disagreement with the adjudicator's decision, is the portion of the decision stating that she was not "willing" to work the number of hours required in her occupation. Ms. Sutton asserts she was willing to work the full-time hours, but that she was prohibited from doing so by medical factors that were beyond her control. The claimant has no further disagreement with the adjudicator's decision in this matter.

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".

An otherwise claimant is eligible to receive unemployment insurance benefits with respect to only week if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4(3) and 871 IAC 24.22. The claimant bear the burden in establishing that the claimant meets the above requirements.

To satisfy the availability requirements of the law, an individual must be willing, able, and ready to accept suitable work which the claimant does not have good cause to refuse. The claimant must be genuinely attached to the labor market to satisfy to ableness requirement; an individual must be physically and mentally able to work in gainful employment. With regard to illness or injury, each case is decided upon on an individual basis, recognizing that various work opportunities present different physical requirements. Statement from a medical practioner's considered to be prima facie evidence of the physical ability of the individual to perform the work required.

In this case, the claimant was hired to work full-time and claimant's employment during her base period was based solely upon full-time employment. The evidence in the record establishes that Ms. Sutton was not able to work the number of hours required and thus her availability for work was unduly limited and resulting in benefits denied are the denial of unemployment insurance benefits as of January 21, 2018.

The administrative law judge concludes, based upon the additional information available at the time of hearing, that the claimant's inability to work the number of hours required in her

occupation limited her availability for work resulting in Ms. Sutton not meeting the requirements of the law. Ms. Sutton's inability to work the full-time hours was clearly not a matter of her personal choice, but due to circumstances beyond her control.

DECISION:

The representative's unemployment insurance decision dated February 8, 2018, reference 03, is affirmed as modified. The portion of the determination denying benefits beginning January 21, 2018, upon finding that the claimant was not available to work the number of hours required in her occupation is affirmed. The portion of the determination finding that the claimant was not "willing" to work the number of hours required is modified, finding that the claimant was not able to work the number of hours required. The determination is affirmed as modified.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn