

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NANCY L HUSS**  
Claimant

**APPEAL NO: 06A-UI-08409-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 06/25/06 R: 02**  
**Claimant: Appellant (1)**

Section 96.4-4 – Able and Available for work

**STATEMENT OF THE CASE:**

Nancy Huss (claimant) appealed a representative's August 14, 2006 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she did not have a full release to return work with Care Initiatives (employer) after her non-work-related injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 7, 2006. The claimant participated personally. The employer represented by Lynn Corbeil, Attorney at Law, and participated by Karen Daniels, Director of Nursing and Shawn Mikels.

**ISSUE:**

The issue is whether the claimant was able to return to work with the employer after her non-work-related injury.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on June 12, 2000, as a full-time certified nurse's aide. The claimant suffered a non-work-related injury to her heel. Since her injury she has been under restriction by her physician. The claimant is currently able to work only four hours per day.

**REASONING AND CONCLUSIONS OF LAW:**

For the following reasons the administrative law judge concludes the claimant is not eligible to receive unemployment insurance benefits because she is not able to return to work for the employer after her non-work-related injury.

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".

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 24.23(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.

Inasmuch as the injury was not work-related and the treating physician has not released the claimant to return to work without restrictions, the claimant has not established ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

**DECISION:**

The representative's August 14, 2006 decision (reference 01) is affirmed. The claimant is not able and available for work effective June 25, 2006. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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