

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEANNE L SCHIPPER
Claimant

DEE ZEE INC
Employer

APPEAL NO. 12A-UI-14474-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/28/12
Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated November 28, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on January 10, 2013. The claimant participated personally. The employer responded to the hearing notice but was not available when called by the administrative law judge. A detailed message was left for the employer but a representative did not call during the hearing. The record consists of the testimony of Deanne Schipper and Claimant's Exhibit A.

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 worked as a full-time production worker for the employer. She was hired on September 23, 2011. She sustained a work-related injury and was placed on lifting restrictions that prohibited her from working. Those restrictions were lifted on December 3, 2012, and the claimant is able to return to work with no restrictions. (Exhibit A)

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.

The claimant is able and available for work as of December 3, 2012. She has been released to return to work without restrictions. The employer did not participate in the hearing and the claimant's employment status is unknown. The claimant believes that she has been terminated. This matter is therefore remanded to the Claims Section for determination of the separation issues.

DECISION:

The decision of the representative dated November 28, 2012, reference 01, is modified in favor of the appellant. The claimant is able and available for work as of December 3, 2012. The separation issues are remanded to the Claims Section for determination.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css