

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA R FESSLER
Claimant

APPEAL NO: 10A-UI-05240-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE CBE GROUP INC
Employer

OC: 03/07/10

Claimant: Appellant (4)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Angela R. Fessler (claimant) appealed a representative's March 30, 2010 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in connection with her employment with The CBE Group, Inc. (employer) 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 May 26, 2010. The claimant participated in the hearing. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, 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?

FINDINGS OF FACT:

The claimant started working for the employer on February 19, 2006. She worked full time as a debt collector at the employer's West Des Moines, Iowa location. Her last day of work was January 17, 2010. Because of an off-work injury to her back, the claimant's doctor took her off work effective January 18, for what could have been for 60 or more days. In a separately issued decision also issued on March 30, 2010 (reference 02), an Agency representative concluded that the employer discharged the claimant from her employment but not for misconduct effective March 9, 2010. As of that time and as of the time of the fact-finding interview conducted on or about March 29, the claimant's doctor had not yet issued her a release to return to work.

On March 31 the claimant's doctor issued her a release for work with no restrictions. The claimant has since been seeking employment.

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, is available for work, and 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 medical release without restriction from a physician is considered prima facie evidence of the physical ability of the claimant to perform work. 871 IAC 24.2(1)a. The claimant has demonstrated that as of March 31, 2010 she is able and available to work in some gainful employment. Benefits are allowed as of the week ending April 3, 2010, if the claimant is otherwise eligible.

DECISION:

The representative's March 30, 2010 decision (reference 02) is modified in favor of the claimant. The claimant is able to work and available for work effective the week ending April 3, 2010. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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