

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DORIS A ROSS**  
Claimant

**EGS CUSTOMER CARE INC**  
Employer

**APPEAL 17A-UI-10177-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/27/17  
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 27, 2017, (reference 01) unemployment insurance decision that allowed benefits based upon a short-term leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on October 26, 2017. Claimant participated. Employer participated through human resources generalist Turkessa Newsone.

**ISSUE:**

Is the claimant able to work and available for work effective August 27, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a full-time data entry processor. Her last day of work was August 30, 2017. She and two others were sent home because of finding bedbugs at work. The employer paid for inspections at the three homes. Orkin determined claimant's home was the source of the bedbugs at work. The employer sent claimant home on a leave of absence until that infestation is eliminated. Alternatives, an organization in Illinois that helps older adults, is arranging funding and treatment in the next few weeks.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.22(2) provides:

**Benefit 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.

j. *Leave of absence.* A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

Iowa Admin. Code r. 871-24.23 provides:

**Availability disqualifications.** The following are reasons for a claimant being disqualified for being unavailable for work.

**(1)** An individual who is ill and presently not able to perform work due to illness.

**(35)** Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. This bedbug infestation at claimant's home and its impact upon her workplace is akin to a communicable illness such as the flu with fever and vomiting that would negatively impact other employees. The employer has reasonable safety and health reasons for placing her on a leave of absence until it is verifiably resolved. Because it has not yet been remediated, claimant has not established she is available for or able to work. Accordingly, she is not eligible for unemployment insurance benefits.

**DECISION:**

The September 27, 2017, (reference 01) unemployment insurance decision is reversed. The claimant is not able to and available for work effective August 27, 2017. Benefits are denied until such time as claimant provides evidence to the employer that the infestation has been resolved.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs