

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTINE K MCKENNA
Claimant

MERCY MEDICAL CENTER-CLINTON INC
Employer

APPEAL 19A-UI-09881-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/10/19
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

On December 13, 2019, Mercy Medical Center-Clinton Inc. (employer) filed an appeal from the December 3, 2019 (reference 02) unemployment insurance decision that determined Christine McKenna (claimant) was able and available for employment.

A telephone hearing was held on January 10, 2020. The parties were properly notified of the hearing. Employer participated by Hearing Representative Jennifer Pierce, Human Resources Generalist Lisa Atkinson, and Employee Health Nurse Colleen Meggers. Claimant participated personally and was represented by Attorney Nathaniel Staudt.

Official notice was taken of claimant's payment history on the unemployment insurance system. Claimant's Exhibits 1-1 and 1-2 were admitted. Employer's Exhibits A and B were admitted.

ISSUE(S):

- I. Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant worked for employer as a full-time Secretary/CNA. Claimant's first day of employment was March 10, 2014. The last day claimant worked on the job was November 18, 2018. Claimant's immediate supervisor was Linda Stice-Helenthal. Claimant separated from employment on October 15, 2019. Claimant was discharged on that date.

Claimant was discharged because her short-term disability had ended on October 14, 2019, and she was unable to return to work. See Employer's Exhibit A. Claimant's position required long periods of time on her feet, which she was unable to do because of ongoing medical issues. Claimant injured her knee at work in September 2018 and then fell and broke her arm at home in January 2019. She subsequently had knee surgery in April 2019. The most recent medical documentation employer had indicated claimant was dated August 22, 2019, and indicated

claimant could not return to work until her next office visit on December 24, 2019. See Claimant's Exhibit 1-1.

Claimant's physician released her to return to work with restrictions in early November 2019. She is restricted to light-duty work; restricted to standing and walking no more than 15 minutes per hour; and restricted from kneeling, squatting, and using ladders. See Claimant's Exhibit 1-2. Those restrictions are still in effect. Claimant is searching for seated work in the medical and secretarial fields, which she has experience doing. She has transportation for employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the December 3, 2019 (reference 02) unemployment insurance decision that determined Christine McKenna (claimant) was able and available for employment is **AFFIRMED**. The administrative law judge concludes that the claimant is able to work and available for work effective November 10, 2019.

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. 871-24.23(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 medical practitioner and has not been released as being able to work.

To be 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); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Since the employment ended on October 15, 2019, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since she has performed secretarial-type work before and has been released by her physician for that kind of work, she is considered able to work even if she cannot return to a job as most recently performed for the employer. Thus the claimant is considered able to and available for work as of November 10, 2019.

Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The December 3, 2019 (reference 02) unemployment insurance decision that determined Christine McKenna (claimant) was able and available for employment is AFFIRMED. The administrative law judge concludes that the claimant is able to work and available for work effective November 10, 2019.

Andrew B. Duffelmeyer
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Decision Dated and Mailed

abd/scn