

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINE A DILLON**  
Claimant

**APPEAL NO: 09A-UI-15576-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT**

**OC: 06/14/09**  
**Claimant: Appellant (1)**

Section 96.4-3 – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant appealed a representative's October 9, 2009 decision (reference 01) that concluded she was not able to work as of June 14, 2009. A telephone hearing was held on November 18, 2009. The claimant participated in the hearing with her witness, Kaye Malone. 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:**

As of June 14, 2009, is the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant worked as a certified nursing assistant at Iowa Veteran's Home. From January through April 30, her employer made accommodations for her by giving her light-duty work to do. For example, the claimant fed residents during this time. The claimant had surgery on April 30, 2009. The claimant went on a leave of absence on April 30 (FMLA).

In early June, the claimant's physician released the claimant to work with restrictions. The claimant had to wear braces and she could only lift one pound with her right hand and no more than five pounds with her left hand. The claimant's employer would not accommodate these work restrictions. As a result, the claimant continued her leave of absence under FMLA.

After the claimant's FMLA ended and she still had the same work restrictions, Iowa Veteran's Home ended the claimant's employment in late September. As of the date of the hearing, the claimant's work restrictions have not changed. She had a doctor's appointment on November 23. The claimant's physician may change the restrictions at this appointment.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. A claimant who requested and is granted a leave of absence is not eligible

to receive benefits because the absence is deemed a period of voluntary unemployment. 871 IAC 24.23(10). Also, a claimant who is looking for a tailor-made job as a result of work restrictions is not able to and available for work.

The claimant acknowledged that when her employer would not accommodate her work restrictions, she did not look for work while she was on a leave of absence with the employer. After the employer ended the claimant's employment because she was unable to her regular duties, the claimant has not looked for work because she does not know what work she is capable of doing with her current work restrictions.

The claimant was on a leave of absence from June 14 through September 28. For this period she is not eligible to receive benefits because she is deemed to be voluntarily unemployed. Also, the facts do not demonstrate that she is able to do meaningful work with the work restrictions she has had since June 14. Since she is looking for a tailor-made job that will accommodate her work restrictions, she has not established that she is able to and available to work in her usual occupation and perform her regular job duties. As of June 14, the claimant is not eligible to receive benefits.

**DECISION:**

The representative's October 9, 2009 decision (reference 01) is affirmed. From June 14 through September 28, 2009, the claimant was on a leave of absence and is not eligible to receive benefits while she is on a leave of absence. With the work restrictions the claimant has had since June 14, 2009, she is looking for a tailor-made job, which makes her unable to and unavailable for meaningful work. As of June 14, the claimant is not eligible to receive benefits. To establish her eligibility the claimant's doctor must release her to work without work restrictions or restrictions that not do not require a tailor-made job and the claimant must demonstrate she is looking for meaningful for work if her work restrictions change.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css