

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KENOSHA M WIMS**  
Claimant

**STEENA CO LLC**  
Employer

**APPEAL 19A-UI-04589-NM-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/12/19**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

On June 6, 2019, the claimant filed an appeal from the May 31, 2019, (reference 01) unemployment insurance decision that denied benefits based on a determination that claimant was on a voluntary leave of absence and not available for work. The parties were properly notified about the hearing. A telephone hearing was held on July 1, 2019. Claimant participated and testified. Employer participated through owner Cara VanSteenis.

**ISSUE:**

Is claimant able to and available for work effective May 12, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on February 20, 2019. Claimant is currently employed as a part-time crew member. On April 26, 2019, claimant went on a leave of absence due to a non-work related injury. Claimant was initially taken off work completely, but her doctor released her to return to light duty on or around June 23, 2019. Claimant's light duty restrictions require her to perform work while sitting and she can only bear weight on her injury as tolerated. The employer has allowed claimant to return to her part-time position on light duty.

**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 effective May 12, 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 provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

...

(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)).

Following a non-work related injury, claimant was restricted by her doctor from performing any work from April 26, 2019 until the week beginning June 23, 2019. Claimant was not available for work during this time frame. Claimant was released to return to work with light duty restrictions effective June 23, 2019 and has since returned to work. As such, claimant is not available for work effective May 12, 2019.

**DECISION:**

The May 31, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective May 12, 2019. Benefits are withheld until such time as claimant is eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/scn