

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA G TREVINO
Claimant

APPEAL NO. 12A-UI-08172-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE HON COMPANY
Employer

OC: 05/27/12
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated June 28, 2012, reference 02, which denied unemployment insurance benefits as of May 27, 2012 upon a finding the claimant was not able to perform work due to illness. After due notice was provided, a telephone hearing was held on August 2, 2012. Claimant participated. The employer participated by Ms. Sandra Linsin, Hearing Representative, and witnesses: Ms. Cherie McClusky, Human Resource Manager and Mr. Jake Swift, Supervisor.

ISSUE:

The issue is whether the claimant is able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Maria Trevino was previously employed by The Hon Company as a production worker until she voluntarily left her employment on or about February 9, 2012 because of health issues. Ms. Trevino had been hospitalized due to an asthmatic condition and left her employment because she felt that she was not capable of continuing to work because of her asthma. Since leaving her employment with The Hon Company, Ms. Trevino has continued to be under the care of her physician. The record is unclear as to whether the claimant's physician is willing to release Ms. Trevino to return to full-time work in the general workforce. Ms. Trevino testified that she seldom goes outside due to her asthmatic condition. Ms. Trevino testified at the time of hearing that she was not able to work because of her medical issues.

REASONING AND CONCLUSIONS OF LAW:

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".

To satisfy the ableness requirement of the Iowa Employment Security Law, an individual must be physically and mentally able to work in some gainful employment, not necessarily in an individual's customary occupation, but which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). A statement from a medical practitioner is considered prima facie evidence of the ability of the individual to perform the work required, that is, the statement is legally sufficient to establish the claimant's physical ability unless disproved by other evidence. 871 IAC 24.22(1)a.

871 IAC 24.22(2) provides that to satisfy the availability requirement, an individual must be (1) able, and ready to accept suitable work which individual does not have good cause to refuse. The individual must be genuinely attached to the labor market. This means that the types of services that the claimant is offering is generally performed in the geographic area in which the claimant is offering the services.

Based upon the evidence in the record and application of the appropriate law, the administrative law judge concludes that Ms. Trevino has not been able and available for employment since establishing her claim for benefits and, therefore, is not eligible for benefits.

DECISION:

The agency representative's decision dated June 28, 2012, reference 02, is affirmed. Claimant has not been able and available for work since establishing her claim for benefits and is currently not able and available for work. The claimant is presently ineligible for benefits.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs