

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHELLE R FIX
Claimant

T.M. INCORPORATED
Employer

APPEAL 18A-UI-02735-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/28/18
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 19, 2018, (reference 02) unemployment insurance decision that denied benefits based on inability to work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on March 27, 2018. The claimant participated and testified. The employer participated through Human Resource Administrator Scott Cort.

ISSUE:

Is the claimant able to work and available for work effective January 28, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a kit tech from April 8, 2013, until this employment ended on January 15, 2018. The last day claimant actually worked was October 12, 2017. At that time claimant was suffering from a non-work related injury which required her to work light duty. The employer did not have any light duty positions available, so claimant was placed on FMLA leave. While on medical leave claimant was diagnosed with another non-work related medical condition. As of late November, when claimant last saw her doctor, she had lifting and bending restrictions. Claimant has not seen her doctor since these restrictions were placed on her. Claimant testified most of her work history includes labor intensive positions that would be outside her restrictions. Claimant further testified that, while she had previously held one position that would fall within her restrictions, she does not believe she is capable of working in any position at this time.

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 January 28, 2018.

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.

Claimant received a non-work related medical diagnosis, while on leave for a non-work related injury in the late fall of 2017. Claimant last saw her doctor towards the end of November 2017 and at that time was given lifting and bending restrictions. An employer is not obligated to accommodate a non-work related medical condition. Claimant was separated from employment with this employer in January 2018 and therefore is not required to return to work for this employer, but must show she is capable of performing some work given her education, training and work experience, and any medical restrictions. Claimant testified, at this point in time, she does not feel she can do any work. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given any medical restrictions and makes herself available for such work.

DECISION:

The representative's decision dated February 19, 2018, (reference 02) is affirmed. The claimant is not able to work and available for work effective January 28, 2018. Benefits are withheld until such time as the claimant obtains a full medical release to return to some type of work of which she is capable of performing given any medical restrictions and makes herself available for such work.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs