

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLE L WINEBRENNER
Claimant

APPEAL NO. 12A-UI-01264-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OGDEN MANOR
Employer

OC: 12/25/11
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness or Injury

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated January 27, 2012, reference 01, that held she was not eligible for benefits effective December 25, 2011, because she was unable to perform work due to injury. A hearing was held on February 27, 2012. The claimant participated. Matthew Buck, Administrator, participated for the employer.

ISSUE:

The issue is whether claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record, finds that: The claimant began work for the employer as a full-time C.N.A. on October 1, 2010. She suffered a non-work-related heart condition in December 2011 that caused her to be off work due to high blood pressure. The heart condition has been a life-long issue for the claimant.

The claimant received a restricted work release from her doctor not to lift more than 20 pounds. The employer rejected claimant's request to return to work because her job required lifting more than the restriction amount and the heart condition was not work related. The employer considers claimant on a medical leave and she concurs. Claimant is looking for other employment that is she is capable of performing given her restriction.

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".

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge concludes the claimant does not meet the availability requirement of the law for unemployment benefits based on her current employment. Benefits are denied.

The weight restriction precludes claimant ability to do all of her regular job duties and the employer is not required to modify claimant's work due to a non-work-related illness or injury. Since claimant and employer agree claimant remains on medical leave, the employment separation is based on being able and available for work at this time.

DECISION:

The decision of the representative dated January 27, 2012, reference 01, is affirmed. The claimant is not eligible for benefits, as she does not meet the availability requirements of the law.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

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