

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY MUEGGENBERG
Claimant

APPEAL NO: 21R-UI-16945-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/15/20
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 3, 2021, (reference 03) unemployment insurance decision that denied benefits based upon being able to and available for work for the November 8, 2020 due to a surgery. After due notice was issued, a telephone conference hearing was scheduled to be held on May 18, 2021. The claimant participated. Exhibits A, D-1, and D-2 were admitted into the record. The administrative law judge found the claimant's appeal was untimely in 21A-UI-09695-SN-T on June 2, 2021.

On July 29, 2021, the claimant appealed the administrative law judge's decision in 21A-UI-09695-SN-T to the Employment Appeal Board (EAB). The EAB reasoned that the claimant's appeal was timely and remanded the case back to the administrative law judge to be determined on the merits. A new hearing was scheduled for September 24, 2021. The claimant participated. Deb Gehlsen provided testimony in support of the claimant.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending November 8, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant had open heart surgery on November 5, 2020. She was discharged from the hospital on November 9, 2020. The claimant was restricted from lifting more than eight to 10 pounds. She was also restricted from driving for more than a month. The claimant worked as a banquet worker at Boulders City of Denison and the Denison Country Club at the time. In her work there, the claimant is not required to lift more than eight pounds. The driving restriction did not prevent the claimant from working because she lives within walking distance of her residence.

The claimant provided a copy of a doctor's note written by Dr. Kyle Ulveling on March 12, 2021, releasing her from restrictions. (Exhibit A) The claimant explained that she had already been

released, but the physician erred in dating the release to the day she was there rather than when she was actually released.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work effective November 8, 2020.

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. 871-24.22(2) provides:

Benefit 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.

(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual

does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

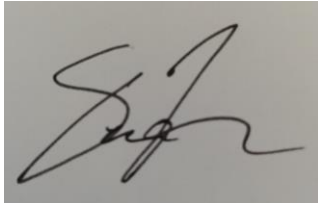
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that she is be able to work and available for work. Iowa Admin. Code r. 871-24.22.

The claimant was restricted from driving and had weight lifting restrictions after being discharged. These restrictions did not inhibit her ability to work because of the nature of the work she performs. The claimant was not required to lift items weighing more than eight pounds. She was also not required to drive to commute to her work. The claimant was able and available for work effective November 8, 2020.

DECISION:

The March 3, 2021, (reference 03) unemployment insurance decision is reversed. The claimant was able to work and available for work effective November 8, 2020. Benefits are granted, provided the claimant is otherwise eligible.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown on a light gray background.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

September 29, 2021
Decision Dated and Mailed

smn/mh