

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEVERLY A BEAUMONT
Claimant

APPEAL NO. 10A-UI-15664-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 10/17/10
Claimant: Appellant (1)**

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 10, 2010, reference 03, decision that denied benefits effective October 17, 2010, based on an Agency conclusion that the claimant was unable to work due to injury. After due notice was issued, a hearing was held on January 4, 2011. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Numbers 10A-UI-15662-JTT and 10A-UI-15663-JTT, both concerning the claimants separation from employer Kwik Trip, Inc. Exhibits One and A were received into evidence.

ISSUE:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Beverly Beaumont established a claim for unemployment insurance benefits that was effective October 17, 2010. Prior to that time, Ms. Beaumont had undergone a knee replacement with complications. Shortly before she filed her claim for benefits, Ms. Beaumont underwent spinal fusion surgery. From the time Ms. Beaumont filed her claim for benefits to the present, Ms. Beaumont has been under the care of a physician and has not been released to return to work. Ms. Beaumont is to be reevaluated on January 20, 2011 to determine whether she can be released to return to work at that time.

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".

The weight of the evidence indicates that Ms. Beaumont has not been able to work since she established her claim for benefits and has been under the care of a treating physician who has not released her to return to work. For that reason, Ms. Beaumont would not meet the work ability and work availability requirements of law. Benefits are denied effective October 17, 2010. This disqualification continued as of the January 4, 2011 appeal hearing. Because the able and available determination is a week-by-week determination, as soon as Ms. Beaumont is released to return to work, she should provide appropriate medical documentation to her local Workforce Development Center so that her work ability and availability can be reassessed.

DECISION:

The Agency representative's November 10, 2010, reference 03, decision is affirmed. The claimant has not been able and available for work since establishing her claim for benefits. Accordingly, the claimant is not eligible for benefits. This disqualification continued as of the January 4, 2011 appeal hearing. Because the able and available determination is a week-by-week determination, as soon as the claimant is released to return to work, she should provide appropriate medical documentation to her local Workforce Development Center so that her work ability and availability can be reassessed.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw