

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KATHERINE E MEYER

Claimant

APPEAL NO. 14A-UI-05139-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COUNTRYSIDE NURSING & REHAB

Employer

OC: 02/02/14

Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated May 15, 2013, reference 10, that concluded she was not available for work from February 2 through April 12, 2014. A telephone hearing was held on July 1, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing with her representative, Mary Hamilton. Debra Pierce participated in the hearing on behalf of the employer with a witness, Debbie Menzenburg.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant worked for the employer as a certified nursing assistant until September 2013. She suffered an injury to her back that caused her to be taken off work. The claimant filed a claim for worker's compensation. The employer terminated her employment as of September 29, 2013.

The claimant filed a new claim for unemployment insurance benefits effective February 2, 2014. On May 15, 2014 the Agency issued a decision concluding the claimant was discharged on September 29, 2013, but not for work-connected misconduct. The employer did not appeal that decision.

As of February 2, 2014 there was a difference of opinion between two doctors as to whether the claimant had any restrictions due to a back condition. One doctor had imposed a 40-pound weight restriction and no frequent bending or squatting. Another doctor had released the claimant without restrictions. She has not offered to return to work for the employer because of the lifting restrictions that would prevent her from doing CNA work.

The claimant has a high school diploma and nursing assistant certification. She is a licensed real estate broker and analysis and operated her own business. She has also worked as a workforce business coordinator. The jobs do not involve lifting, bending, or squatting.

Until May 25, 2014, when the claimant entered approved training, she contacted a minimum of two employers every week seeking employment. She has applied for pharmaceutical positions, real estate position and positions at St. Luke Hospitals that do not involve lifting, bending or squatting.

As of May 31, 2014 the claimant was approved for training under the IWD approved training program which allows claimants to receive benefits while attending approved training. The work search requirement is waived during training.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires heavy lifting. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

After the claimant was terminated from her position with the employer, she had no obligation to offer to return to work of the employer. Her failure to contact the employer does not make her unavailable for work.

The law provides that an employer is not chargeable for benefits paid to a claimant who is in approved training. The employer, therefore, is not chargeable for benefits as of May 25, 2014.

DECISION:

The unemployment insurance decision dated May 15, 2013, reference 10, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/can