

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHERYL A BRICK**  
Claimant

**APPEAL 16A-UI-11964-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QUALICENTERS SIOUX CITY**  
Employer

**OC: 10/16/16  
Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the November 1, 2016 (reference 01) unemployment insurance decision that found claimant was ineligible for unemployment benefits because she was not able to perform work. The parties were properly notified of the hearing. A telephone hearing was held on November 21, 2016. The claimant, Cheryl A. Brick, participated personally. The employer, Qualicenters Sioux City, did not participate. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits record including the fact finding documents.

**ISSUE:**

Is the claimant able to work and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant was employed full-time for this employer from May 14, 1990 until October 8, 2016. She is no longer employed with this employer. Claimant was working full-time for this employer. She worked four 12 hour days per week.

Beginning June 28, 2016 claimant was hospitalized for a non-work related illness. She applied for and received Family and Medical Leave Act ("FMLA") leave beginning on this date. Her doctor released her back to work without restriction starting on October 10, 2016. This information was communicated to her supervisor; however, she was already separated from employment before October 10, 2016. She had not exhausted her FMLA leave on October 10, 2016.

There has not been an initial investigation and determination with regard to the claimant's separation from employment by the Benefits Bureau of Iowa Workforce Development.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is able to and available for work effective October 16, 2016.

Iowa Code § 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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Because the medical condition was not work-related and the treating physician has released the claimant to return to work, she has established her ability to work.

**DECISION:**

The November 1, 2016 (reference 01) unemployment insurance decision is reversed. The claimant is able to and available for work. Benefits are allowed, provided she is otherwise eligible.

**REMAND:** The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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