

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELISSA E SCHUTE
Claimant

APPEAL NO. 17A-UI-00357-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

S T L CARE COMPANY
Employer

**OC: 11/20/16
Claimant: Respondent (4)**

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 6, 2017, reference 02, decision that allowed benefits to the claimant effective December 25, 2016, provided the claimant was otherwise eligible, based on an agency conclusion that the claimant was able to work and available for work within the meaning of the law effective December 25, 2016. After due notice was issued, a hearing was held on February 1, 2017. Claimant Melissa Schute did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Jenna Gardner, Administrator, represented the employer. Exhibit 1 and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the agency's administrative record of the claimant's weekly claims and of the record of benefits paid to the claimant, which record indicates that no benefits have been paid to the claimant in connection with the claim that was effective November 20, 2016.

ISSUES:

Whether the claimant has been able to work and available for work within the meaning of the law since December 25, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: S T L Care Company operates Living Center East, a long-term care facility in Cedar Rapids. Melissa Schute began her full-time employment at Living Center East in 2015 and continues in the full-time employment at this time. Ms. Schute is a Direct Service Professional. Her duties involve hands on care of patients. Ms. Schute is assigned to the overnight shift. In October 234, 2016, Ms. Schute went off work on an approved leave of absence so that she could undergo surgery for a non-work related health issue and recover from that procedure. Effective November 22, 2016, Ms. Schute was released to return to work, but only for 1.5 hours per day one or two days per month. In addition, Ms. Schute was restricted from lifting, pushing, pulling, or walking with more than 10 pounds. The employer was unable to meet these restrictions and Ms. Schute did not return to work at that time.

On December 8, 2016, Ms. Schute and her doctor provided the employer with a medical release document that released Ms. Shute to return to work without restrictions effective December 24, 2016. Ms. Schute returned to her regular full-time duties on December 24, 2016 and had continued in those same duties up to this point.

Ms. Schute had established a claim for unemployment insurance benefits that was effective November 20, 2016. Ms. Schute made weekly claims for four weeks, but then discontinued her claim after the week that ended December 17, 2016. Ms. Schute has not received any benefits in connection with the claim.

REASONING AND CONCLUSIONS OF LAW:

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 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:

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.

(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(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The evidence in the record indicates that Ms. Schute has at all relevant times been attached to her employment at Living Center East. The evidence establishes that Ms. Schute had indeed been able to work since December 25, 2016. The medical release supports that conclusion. That fact that Ms. Schute had been working full-time since December 24, 2016 also supports that conclusion that she has been able to work. Because Ms. Schute has been working full-time she does not meet the particular availability requirement that applies to unemployment insurance claims. The January 6, 2017, reference 02, decision and the concern about whether Ms. Schute has been able and available for work since December 25, 2016 are moot in light of the fact that Ms. Schute has made no weekly claims for the period at issue. In any event, benefits are denied effective December 25, 2016 because Ms. Schute has been working full-time and, therefore, does not meet the availability requirement.

DECISION:

The January 6, 2017, reference 02, decision is modified as follows. The claimant has been able to work since December 25, 2016. Benefits are denied effective December 25, 2016 because the claimant has been working full-time and, therefore, does not meet the availability requirement.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs