

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARGO ANGELL**  
Claimant

**APPEAL NO. 17A-UI-00831-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/12/16  
Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Margo Angell filed a timely appeal from the January 20, 2017, reference 02, decision that denied benefits effective January 1, 2017, based on the claims deputy's conclusion that Ms. Angell was unable to work due to injury. After due notice was issued, a hearing was held on February 14, 2017. Ms. Angell participated. Exhibit A was received into evidence at the time of the hearing. Exhibit B was subsequently received into evidence when it was submitted on the afternoon of February 14, 2017.

**ISSUES:**

Whether the claimant has been able to work and available for work since January 1, 2017.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Margo Angell filed an original claim for benefits that was effective June 12, 2016 and filed an additional claim for benefits that was effective December 25, 2016. Ms. Angell made a weekly claim for benefits for the week that ended December 31, 2016. Ms. Angell made that weekly claim by speaking directly with a Workforce Development representative. Workforce Development records indicate that Ms. Angell has made no weekly claims since that time. However, during the week that began January 22, 2017, Ms. Angell took steps to reactivate her underlying claim for benefits. Workforce Development records indicate that Ms. Angell has made no weekly claims since reactivating the underlying claim.

Ms. Angell was most recently employed by Operation New View, a head start program, as a part-time senior aide. Ms. Angell worked 25 to 30 hours per week. The employer ended the employment on December 12, 2016 due to Ms. Angell's physical inability to perform certain duties.

Ms. Angell suffers from an inoperable herniated vertebral disc. In 1989 and 1990 Ms. Angell underwent surgery on her back. Ms. Angell is permanently restricted from lifting more than 10 pounds. Ms. Angell also had restrictions related to twisting, bending and squatting. Ms. Angell also had limits on how long she can sit and stand. Due to her chronic back condition,

Ms. Angell had chronic pain issues. Ms. Angell takes prescription hydrocodone to address her chronic pain issues. Ms. Angell generally takes a dose of hydrocodone in the morning and second dose of hydrocodone in the evening. Ms. Angell is sometimes able to go a day or two without take a dose of hydrocodone. Ms. Angell's chronic medical condition and the prescription pain medication she takes to address that condition increase Ms. Angell's risk of falling.

On January 4, 2017, Ms. Angell fell. Ms. Angell began to "black out," grabbed a grab bar to attempt to stop her fall, and hit her face on a concrete wall. On January 6, 2017, Ms. Angell sought medical treatment at an emergency room and was diagnosed with a severe concussion. Ms. Angell reported her injury to a Workforce Development representative.

On January 19, 2017, Ms. Angell underwent an outpatient surgical procedure as part of a new pain management treatment that she and her doctor hoped would provide better management of her chronic back pain. The treatment involved stimulating the injury portion of her spine with electrical current. The treatment did not provide the desire improvement. Ms. Angell and her doctor reverted to managing the chronic pain issues with hydrocodone. Ms. Angell and her doctor may at some point explore implanting a morphine pain pump in Ms. Angell's spine. While Ms. Angell and her doctor were exploring the electronic stimulation option, Ms. Angell's lifting restriction was amended to a five-pound maximum.

Workforce Development had scheduled a fact-finding interview for January 19, 2017 to address whether Ms. Angell was able to work and available for work. Ms. Angell was unable to participate in the fact-finding interview because she was undergoing the procedure to determine whether electronic stimulation of her spine would help with pain management.

Ms. Angell advises that she also suffers from anxiety and depression. Ms. Angell is considering applying for Social Security disability benefits.

At the time of the February 14, 2017 appeal hearing, Ms. Angell had not presented any medical documentation to establish that she is able to perform any type of work or that a doctor has released her to perform any type of work. The administrative law judge provided Ms. Angell additional opportunity to submit medical documentation. Ms. Angell submitted only billing information for treatment received on January 6, 2017 and January 9, 2017. Ms. Angell submitting no medical documentation contained a diagnosis or a statement regarding her ability to perform work.

At the time of the February 14, 2017 appeal hearing, Ms. Angell was unable to testify to her job search activities. The administrative law judge provided Ms. Angell additional opportunity to submit documentation of her work search. The work search log that Ms. Angell submitted reflects in-person contact with QC Mart and Twin Bridges Inn on January 3, 2017. The work search log reflects contact with a Subway restaurant and a daycare during the week that ended January 14, 2017. The work search log reflects only one job contact during the week that ended January 21, 2017. That contact was with Sports Fan Pizza. The work search log reflects contact with a community action center and with a day care during the week that ended January 28, 2017. The work search log omits job contacts for the weeks that ended February 4 and 11, 2017, the two weeks that preceded the February 14, 2017 unemployment insurance appeal hearing.

#### **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(1) provides:

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

- (1) An individual who is ill and presently not able to perform work due to illness.

The weight of the evidence establishes that Ms. Angell has been unable to work and unavailable for work since January 1, 2017. Ms. Angell suffers from serious, chronic, debilitating health issues that require regular use of a prescription narcotic. Ms. Angell has presented insufficient evidence to establish that she has been able to perform any type of work since January 1, 2017. Ms. Angell has presented insufficient evidence to establish that she is able to perform any of the jobs that she has inquired about since January 1, 2017. Ms. Angell made only one job contact during the week that ended January 21 and no job contacts during the weeks that ended February 4 and 11. Ms. Angell has not made any actual weekly claims for the period beginning January 1, 2017. For all these reasons, unemployment insurance benefits are denied effective January 1, 2017. The able and available disqualification continued as of the February 14, 2017 appeal hearing.

Because the question of whether a claimant is able and available for work involves a week-by-week determination, Ms. Angell may take steps to establish eligibility for benefits in connection with future benefit week. These steps would begin with a clear statement from a licensed medical provide regarding Ms. Angell's medical restrictions, whether Ms. Angell is released to work, the types of work she is able to perform, and the number of hours she is able to work per day and per week. Ms. Angell would also have to make actual weekly claims. Ms. Angell would also have to engage in an active and earnest search for new employment, for work that she can actually perform within her medical restrictions, and keep an accurate and complete log of her work search efforts.

**DECISION:**

The January 20, 2017, reference 02, decision is affirmed. The claimant has not demonstrated that she is able to work, available for work, and actively and earnestly engaged in a search for work that she is able to perform. Benefits are denied effective January 1, 2017. The disqualification continued as of the February 14, 2017 appeal hearing. The steps the claimant needs to take to establish benefit eligibility are outlined above. The claimant must meet all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs