

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARCIA M MELLECKER
Claimant

APPEAL 17A-UI-04599-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 02/19/17
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the April 21, 2017, (reference 02) decision that denied benefits for the two week period ending April 15, 2017, finding she was not able to and available for work. After due notice was issued, a hearing was held by telephone conference call on May 16, 2017. Claimant participated.

ISSUE:

Was the claimant able to and available for work for the period from April 2, 2017 through April 15, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant had a small melanoma removed from her face on Monday April 3, 2017. Her doctor instructed her to remain off work until April 10, 2017. The claimant was available to return to work on April 10, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to and available for work.

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. 871-24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The claimant's doctor had her off work completely for one week from April 3, through April 10. During that week long period the claimant cannot be considered able to and available for work and benefits must be denied. The claimant was allowed to return to work effective April 10, thus her ineligibility period is only for the week ending April 8, 2017.

DECISION:

The April 21, 2017, (reference 02) decision is modified in favor of the appellant. The claimant is not able to and available for work effective for the one week period ending April 8, 2017.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs