

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NADINE M DRIPPS
Claimant

APPEAL 21A-UI-18118-AR-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/11/21
Claimant: Appellant (4R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant, Nadine M. Dripps, filed an appeal from the August 12, 2021, (reference 01) unemployment insurance decision that denied benefits as of July 11, 2021, based upon the determination that claimant was not able to and available for work due to surgery. The party was properly notified of the hearing. A telephone hearing was held on October 8, 2021. The claimant participated personally, with witness Rita Dripps, who did not testify. Claimant's Exhibits A and B were admitted. The administrative law judge took official notice of the administrative record.

ISSUE:

Is claimant able to and available for work effective July 11, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant had been claiming unemployment insurance benefits after a layoff from her employer. She filed a new claim for benefits effective July 11, 2021, and filed weekly continuing claims through the week of August 1, 2021.

On July 28, 2021, claimant had surgery that required significant recovery time. Her doctor restricted claimant from returning to work for a period. Her current prospective date for release is November 25, 2021. However, prior to the surgery, claimant had no work-related restrictions. There was nothing else that restricted claimant's ability to work, either. Claimant's spouse called Iowa Workforce Development around July 28, 2021, to inform it that claimant would not be able to and available for work due to the surgery.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work the weeks of July 11, 2021, and July 18, 2021. She is not able to and available for work the weeks of July 25, 2021, and August 1, 2021.

Iowa Code section 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(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(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 medical practitioner and has not been released as being able to work.

In order to be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant has demonstrated to the administrative law judge's satisfaction that she was able to and available for work for the weeks of July 11, 2021, and July 18, 2021. Accordingly, benefits are allowed for those weeks. Claimant was no longer able to and available for work the weeks of July 25, 2021, and August 1, 2021. Claimant was not able to and available for work for the majority of the week of July 25,

2021, which is the reason she is deemed ineligible for that week. Iowa Admin. Code r. 871—24.22(2)(h). Benefits are denied for those weeks.

DECISION:

The August 12, 2021, (reference 01) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work and available for work during the weeks of July 11, 2021, and July 18, 2021. Benefits are allowed for those weeks. She is not able to and available for work the weeks of July 25, 2021, and August 1, 2021. Benefits are denied for those weeks.

REMAND:

The issue of overpayment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Alexis D. Rowe
Administrative Law Judge

October 13, 2021
Decision Dated and Mailed

ar/mh