

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**NANCY J GULSVIG**  
Claimant

**APPEAL 18A-UI-03594-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 02/25/18  
Claimant: Appellant (2)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 14, 2018, (reference 02), unemployment insurance decision that denied benefits based upon not being able to or available for work effective February 25, 2018. After due notice was issued, a telephone conference hearing was scheduled to be held on April 12, 2018. Claimant participated and was represented by Charles Showalter, Attorney at Law. Claimant's Exhibit A was received.

**ISSUE:**

Is the claimant able to work and available for work effective February 25, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: After her separation from work at Conagra as a maintenance technician, claimant was medically released to work with less physically-demanding, permanent work restrictions. (Claimant's Exhibit A) She has a high school degree as well as associate degrees from Hawkeye Community College in machining and computer programming. She also had on-the-job training in many other subject areas. She is seeking work that will allow her to transfer her experience with less physical job skills including computer experience, developing programs for machinery, writing playbooks, and receptionist experience. Her work searches have included laser machining and programming, cashier, assistant human resource representative, quality control and inspections, and sales of industrial products.

**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 effective February 25, 2018.

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(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.

(Emphasis added.)

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.

Since the employment with ConAgra ended, claimant is no longer obligated to offer her services there. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since she has performed work consistent with her medical restrictions within the work history, she is considered able to work even if she cannot return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of February 25, 2018. Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

**DECISION:**

The March 14, 2018, (reference 02) unemployment insurance decision is reversed. The claimant is able to work and available for work effective February 25, 2018. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs