

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY L LINK
Claimant

APPEAL NO. 13A-UI-07610-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHRISTENSEN FARMS & FEEDLOTS INC
Employer

**OC: 09/16/12
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness or Injury

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated June 18, 2013, reference 04, that held she was not able to perform work due to surgery and benefits are denied May 26, 2013. A hearing was held on July 22, 2013. The claimant participated. Lisa Bloemke, HR Business Partner, and Patty Guggisberg, HR Representative, participated for the employer.

ISSUE:

The issue is whether claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant began employment on August 18, 2010 and last worked on April 25, 2012. She took a medical leave of absence from employment due to issues with the use of her left and right arm.

The department issued a decision June 18, 2013, reference 03, that held claimant was laid-off from work with the employer on January 21, 2013 and claim benefits are allowed. The employer did not appeal.

Claimant filed an additional claim benefit effective May 26, 2013. She had left arm surgery on that date with a 10-pound weight restriction for two weeks. She had right arm surgery on June 26 with a no use of right arm restriction for two weeks.

Claimant has worked as a jailer/dispatcher. She is seeking full-time clerical day work that would not interfere with childcare. She has been given a medical clearance for light duty with 10-pound weight lifting restrictions. She believes she could do office work given the restrictions.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 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 administrative law judge concludes claimant was not able to perform unrestricted full-time work due to left and right arm surgeries until July 7, 2013. She is not eligible for benefits from May 26, 2013 to this period. She is eligible for benefits beginning July 7.

Once claimant separated from employment with the employer on January 21, 2013, the work availability issue becomes what gainful employment can claimant perform given her arm surgeries and work restriction.

It is highly unlikely any employer would hire claimant for full-time work given her left arm surgery on May 26 followed by her right arm surgery on June 26. It follows that no employer would put claimant to work during the period she was restricted from using her right arm. Once claimant recovered from her surgeries, it is reasonable to believe she could do office work given the lifting restrictions.

DECISION:

The decision of the representative dated June 18, 2013, reference 04, is modified. The claimant is not eligible for benefits from May 26, 2013 to July 7, because she does not meet the availability requirements of the law. She is able and available for work effective July 7, 2013.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs