

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**FELICIA CRIBBS**  
Claimant

**GENESIS HEALTH SYSTEM**  
Employer

**APPEAL 18A-UI-00640-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/10/17**  
**Claimant: Appellant (4R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 5, 2018, (reference 02) unemployment insurance decision that denied benefits based upon not being able to or available for work due to being on a voluntary leave of absence. The parties were properly notified about the hearing. A telephone hearing was held on February 8, 2018. Claimant participated. Employer participated through human resources assistant Emily Barudin.

**ISSUE:**

Is the claimant able to work and available for work effective December 10, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time CNA through January 4, 2018. She filed a claim for unemployment insurance benefits the week of December 10, 2017. She was on maternity leave from October 1, 2017, through December 15, 2017. She was released to return to work effective December 15, 2017, returned to work on December 18, and worked until her separation from employment on January 4, 2018. The separation issue has not yet been addressed by the Benefits Bureau of IWD.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective December 10, 2017, through January 4, 2018. She is available and able to work effective January 5, 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.

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.

Inasmuch as the claimant was under medical care from the week of December 10, 2017, through January 4, 2018, she is not considered able to work during that time period. As of her separation date, January 4, 2018, she is considered able to and available for work. 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 January 5, 2018, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant is not able to work and available for work effective December 10, 2017, through January 4, 2018. She is considered able to and available for work effective January 5, 2018.

**REMAND:** The January 4, 2018, separation issue as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination with notice and appeal rights to both parties.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs