

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY L WULF**  
Claimant

**APPEAL NO: 14A-UI-08173-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LAKEVIEW SURGERY CENTER LC**  
Employer

**OC: 07/20/14**

**Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Mary L. Wulf (claimant) appealed a representative's August 5, 2014 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits because she was not able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 2014. The claimant participated in the hearing. Stacy Earley appeared on behalf of Lakeview Surgery Center, L.C. (employer). Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

The claimant started working for the employer on May 10, 2004. She worked full time (32 hours per week) as an instrument technician. Her last day of work was July 18, 2014. She was discharged as of that date due to attendance.

The claimant had some medical issues which had contributed to her attendance, including occasional migraines (about four absences since January 2014) and a recent problem with her wrist. After her discharge the claimant did not begin a search for other employment until after August 4 because she was too upset about how she had been discharged and because she was waiting for a doctor's appointment on her wrist, which occurred shortly after August 4. After her doctor's appointment she did begin a work search yet that week and make at least two employer job contacts that week.

**REASONING AND CONCLUSIONS OF LAW:**

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. To be found 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); 871 IAC 24.22(1). A claimant must remain available for work on the same basis as when her base period wages were accrued. Rule 871 IAC 24.22(2)f.

Prior to the week ending August 10 the claimant had not been searching for work, and she would not have been eligible to receive unemployment insurance benefits through the week ending August 3, 2014. The claimant has demonstrated that as of the week ending August 10 she is able to work in some gainful employment and had begun making a search for work. Benefits are allowed as of the week ending August 10, if the claimant is otherwise eligible.

**DECISION:**

The representative's August 5, 2014 decision (reference 02) is modified in favor of the claimant. While the claimant was not able and available for work through the benefit week ending August 3, she is able to work and available for work effective the benefit week ending August 10, 2014. The claimant is qualified to receive unemployment insurance benefits from and after that week, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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