

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUZAN R TALIAFERRO
Claimant

CARE INITIATIVES
Employer

APPEAL 15A-UI-09698-EC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/31/15
Claimant: Appellant (2)

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/appellant filed an appeal from the August 21, 2015, (reference 05) unemployment insurance decision that denied benefits based upon the IWD representatives determination that the claimant was not able and available for work. The parties were properly notified of the hearing. A telephone hearing was held on September 14, 2015. The claimant, Suzan Taliaferro, participated and testified. The employer, Care Initiatives, did not participate in the hearing.

ISSUE:

Is the claimant able and available to work?

FINDINGS OF FACT:

The relevant evidence is undisputed. Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time, up to 35 hours per week, as a housekeeper in environmental services, from December of 2014 until this employment ended on or about May 31, 2015.

The claimant worked at the employer's nursing and rehabilitation center in Dubuque, Iowa. In February of 2015, she was absent from work for two or four days when she was under medical care. Her doctor provided a note excusing her from work for this short period of time. She was not available for work for a period of time while her doctor treated her conditions. She asked her employer to allow her to work on a "PRN" status, meaning, on an as needed basis. When her medical issues were resolved, her doctor released her to work without restrictions. She was fully able and available to work by the middle of May, 2015. Her employer did not allow her to return to work. Instead, her employment was terminated on May 31, 2015. She was fully able and available to work as of that date. She was able to perform her regular job duties as of May 31, 2015. She was able to work at many jobs as of May 31, 2015.

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 May 31, 2015, and most likely before that date. Benefits are allowed, provided the claimant is otherwise eligible.

Iowa Code § 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 physician and has not been released as being able to work.

The undisputed evidence presented established that the claimant's treating physician released her to return to work without restrictions effective May 31, 2015, or prior to that date. She established her ability to work. The claimant's employer did not allow her to return to her old job duties. No evidence of any available, suitable, comparable work was presented. The claimant is able to and available for work.

Thus, the claimant is considered to be able and available to work as of May 31, 2015, in her usual occupation.

DECISION:

The August 21, 2015, (reference 05) unemployment insurance decision is reversed. The claimant is able to work and available for work effective May 31, 2015. Benefits are allowed, provided she is otherwise eligible.

Emily Gould Chafa
Administrative Law Judge

Decision Dated and Mailed

ec/pjs