

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTINA L TINDALL**  
Claimant

**APPEAL NO. 13A-UI-10102-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 05/19/13**  
**Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a representative's decision dated September 3, 2013, reference 05, which held that the claimant was not eligible for unemployment insurance benefits as of September 11, 2013. After due notice, a hearing was held on October 10, 2013, by telephone conference call. The claimant participated personally. The employer participated by Mary Schroeder, manager. The record consists of the testimony of Kristina Tindall and the testimony of Mary Schroeder. Official notice is taken of the decision in 13A-UI-07429-H2T.

**ISSUE:**

Whether the claimant is able and available for work from August 8, 2013, through September 14, 2013.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of evidence in the record, makes the following findings of fact:

The employer is a convenience store located in Armstrong, Iowa. The claimant worked as a donut maker. She established a claim for unemployment insurance benefits with an original claim date of May 19, 2013. In a prior decision from an administrative law judge, the claimant was awarded unemployment insurance benefits for the week ending May 25, 2013, and for the weeks from June 5, 2013, through July 29, 2013, even though she did have some physician imposed restrictions as a result of a knee injury.

The claimant re-injured her knee and as a result, the same restrictions that she had been given in May 2013 and June 2013, were re-imposed by her physician. The employer took the claimant off work as a result of those restrictions on August 8, 2013. The restrictions given by the claimant's physician did not prevent her from performing the work that was required of her. The claimant was able to work with restrictions through September 14, 2013. She was unable to work after that date due to surgery.

## **REASONING AND CONCLUSIONS OF LAW:**

871 IAC 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.

871 IAC 24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The claimant is eligible for unemployment insurance benefits from August 8, 2013, through September 14, 2013. She is able and available for work on those days because her restrictions did not prevent her from doing the work that she was required to do in her job.

**DECISION:**

The decision of the representative dated September 3, 2013, reference 05, is modified in favor of the claimant. The claimant is able and available to do work from August 8, 2013, through September 14, 2013. Benefits are allowed.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs