

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KIMBERLY J GRIMM**

Claimant

**APPEAL 18A-UI-02917-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY TEMPORARY SERVICES INC**

Employer

**OC: 10/29/17**

**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 filed an appeal from the February 21, 2018, (reference 07) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on March 29, 2018. Claimant participated. Employer did not respond to the hearing notice instruction by registering for the hearing and did not participate.

**ISSUE:**

Is the claimant able to work and available for work between December 3 and December 23, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant received medical treatment for a muscle strain on December 12, 2017, but was not restricted from working at any point in December 2017. (Claimant's Exhibit A) At that point, no work was available through this employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work between December 3 and December 23, 2017.

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.

(Emphasis added.)

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 treating physician had treated claimant without work restriction, and no suitable, comparable work was available, claimant is 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 February 21, 2018, (reference 07) unemployment insurance decision is reversed. The claimant is able to work and available for work between December 3 and December 23, 2017. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs