

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLIE L DROESSLER
Claimant

APPEAL NO: 15A-UI-13072-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THEISENS INC
Employer

**OC: 06/28/15
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Kellie Droessler (claimant) appealed a representative's November 18, 2015 (reference 08) decision that concluded she was not eligible to receive unemployment insurance benefits because she was unable to work with Theisen's (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 15, 2015. The claimant participated personally. The employer participated by Joe Connelly, Soft Lines Manager, and Heidi Bergfeld, Human Resources Assistant.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant had shoulder surgery on August 27, 2015. Her physician placed her on a five-pound weight restriction on her left side. At her interview with the employer on October 1, 2015, the claimant told the employer she was on restrictions but did not specify what the restrictions were. As a condition of her employment, the claimant understood she had to be able to lift fifty pounds. She said she expected to be released from those work restrictions when she reported for work.

The claimant reported to work on October 13, 2015. She had her physician restrictions with her in her back pocket for several days but did not provide those to the employer until October 18, 2015. The doctor's note was dated October 13, 2015 and gave her a weight restriction of five pounds. The claimant called in sick on October 20, 2015. On October 21, 2015, the employer told the claimant she could not work until she had a full release from her physician because the employer was concerned about her safety.

The employer called and left the claimant a voice message on November 2, 2015; reiterating that the claimant could not work until she had a full release from her physician. On November 3, 2015, the claimant sent the employer an e-mail stating her situation had not changed. The employer responded that it would consider the claimant to have quit but she was welcome to reapply as soon as she was released to return to work without restrictions.

On December 11, 2015, the claimant's physician released her to return to work with the restriction of no overhead lifting.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant was not able and available to work with this employer.

Iowa Admin. Code r. 871-24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

- (1) An individual who is ill and presently not able to perform work due to illness.

When an employee is unable to perform work due to a medical condition, she is considered to be unable to work. The claimant was unable to lift the fifty-pound requirement. In addition, the size of the restriction, five pounds, makes the claimant unable to perform work. The claimant is disqualified from receiving unemployment insurance benefits from October 18 until December 11, 2015 due to her inability to work.

DECISION:

The representative's November 18, 2015 (reference 08) decision is modified in favor of the appellant. The claimant is disqualified from receiving unemployment insurance benefits from October 18 until December 11, 2015; due to her inability to work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/can