

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DARCI JUERGENS
Claimant

DUBUQUE COUNTY
Employer

APPEAL 21A-UI-06277-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/27/20
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant, Darci Juergens, filed an appeal from the February 16, 2021 (reference 01) Iowa Workforce Development (“IWD”) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 6, 2021. The claimant participated personally. She was represented by Mark Sullivan, attorney at law. The employer participated through Dawn Sherman. Tammy Freiburger also testified.

The administrative law judge took official notice of the administrative records. Employer Exhibits A-G and Claimant Exhibit 1 were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant able to and available for work effective December 27, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is a full-time CNA, working 30 to 35 hours per week for this employer. Claimant injured her back on June 23, 2020 and notified the employer that it occurred at the workplace. Claimant was seen by the employer’s assigned worker’s compensation doctor. Claimant remained off work until October 12, 2020, at which time she was released to work by the worker’s compensation doctor with restrictions, which included no bending or lifting. Employer accommodated the restrictions and provided claimant with light duty work, including faxing documentation and tending to residents’ nails.

In October sometime, claimant sneezed, which aggravated her existing back injury. Claimant remained on light duty until November 17, 2020, when her existing doctor took her off work while she began newly prescribed medication which could cause dizziness. Employer accommodated the request for time off as prescribed by the worker’s compensation doctor.

On November 27, 2020, claimant was notified that her injury was no longer covered by worker's compensation, based upon the sneeze. On December 1, 2020, employer informed claimant she would need an updated doctor's note regarding her condition.

Since claimant was no longer a worker's compensation case, her prior doctor discontinued seeing her. Claimant sought medical treatment in Dubuque, Cedar Rapids and Iowa City, and was repeatedly turned away upon the office learning the injury was tied to a prior worker's compensation case. Claimant finally saw a doctor who provided claimant restrictions that were consistent with the October 12, 2020 restrictions of no lifting or bending. The only difference between the restrictions was that the October 12, 2020 doctor was tied to the employer's worker's compensation doctor and the most recent restrictions were by her personal doctor. Claimant believed her personal doctor faxed the restrictions to the employer.

Claimant made no efforts to contact the employer about whether she could resume light duty work and made no contact from December 2020 until April 4, 2021 when she contacted the employer. Claimant filed her claim for unemployment insurance benefits with an effective date of December 27, 2020. On April 4, 2021, when she called the employer, she was informed they would not honor her light duty restrictions from her personal doctor, and she would need a complete release with no restrictions to return to work. At the date of the hearing, claimant remained under medical care.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work effective December 27, 2020.

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 96.1A, subsection 38, paragraph "b", subparagraph (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. 871-24.23(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.

For an individual to be eligible to receive benefits, she must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code §

96.4(3). The burden is on the claimant to establish that she is able and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22.

In this case, claimant established a claim for unemployment insurance benefits effective December 27, 2020, while under medical care for a back injury. The root of the injury is irrelevant for purposes of determining claimant's eligibility for benefits. Effective December 27, 2020, claimant had restrictions which prevented lifting or bending in her job, which were essential movements in performing her job duties. Claimant stated she believed her personal doctor faxed these restrictions to the employer. Claimant then took no reasonable action to follow up with the employer, about whether the employer intended to accommodate the restrictions or when she could resume employment. Claimant waited until April 4, 2021 before following up with the employer about returning to work.

Without even evaluating whether the employer should have or could have accommodated the restrictions, the undisputed evidence is claimant made no attempt to communicate with the employer for over three months period, which coincided with her filing for unemployment insurance benefits. The administrative law judge is not persuaded claimant was available for work. Claimant was put on notice on December 1, 2020 that she needed to remain in contact with the employer. She could have and should have followed up with the employer to confirm receipt--and taken additional steps to provide the release, if the employer had not yet received it. Remaining out of contact with the employer for months does not reflect a good faith effort to return to the workforce. Based on the evidence presented, the administrative law judge concludes the claimant has not met her burden of proof to establish she was able to and available for work upon receipt of the restrictions from her personal doctor in December 2020. Accordingly, benefits are denied.

The issue of whether claimant has temporarily or permanently separated from employment is remanded to the Benefits Bureau for an initial investigation. See Iowa Code § 96.5(1)d.

DECISION:

The unemployment insurance decision dated February 16, 2021, (reference 01) is affirmed. The claimant is not able and available for work effective December 27, 2020. Regular unemployment insurance benefits funded by the state of Iowa are denied until such time the claimant is able to and available for work.

REMAND:

The issue of whether claimant has temporarily or permanently separated from employment is remanded to the Benefits Bureau for an initial investigation. See Iowa Code § 96.5(1)d.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

May 18, 2021
Decision Dated and Mailed

jlb/ol

Note to Claimant:

This decision denies benefits. *If this decision becomes final or if you are not eligible for PUA, you may have an overpayment of benefits.* If you disagree with this decision you may file an appeal to the Employment Appeal Board by following the instructions on the first page of this decision. Individuals who do not qualify for regular unemployment insurance benefits, but who are currently unemployed for reasons related to COVID-19 may qualify for Pandemic Unemployment Assistance (PUA). **You will need to apply for PUA to determine your eligibility under the program.** Additional information on how to apply for PUA can be found at <https://www.iowaworkforcedevelopment.gov/pua-information>.