

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA C GERLEMAN**  
Claimant

**APPEAL NO. 12A-UI-09740-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROBERT HALF CORPORATION**  
Employer

**OC: 07/01/12**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 3, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on September 5, 2012. Claimant participated. Employer participated through division director of office team Julie Albert.

**ISSUE:**

Is claimant able to and available for work effective July 1, 2012?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part-time as a data entry clerk and was separated from employment on June 26, 2012. She had panic and anxiety issues but did not have medical advice to quit. She told the employer of her condition after she missed work due to gallbladder surgery and the loss of a child. The employer worked with her but there was nothing it could have done to keep her from quitting. She failed to return after a medical leave of absence and declined accommodation.

Her doctor has increased her medication and she has filed for disability benefits, which has been denied twice. Her treating physicians say she can work without restriction but she has not presented written evidence of such. She has no other wages in the base period.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective July 1, 2012.

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".

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 24.23(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.

Inasmuch as claimant removed herself from work without a medical directive, she is not able to or available for work. Since the treating physician has not released the claimant to return to work with or without restriction, she has not established her ability to work.

**DECISION:**

The representative's decision dated August 3, 2012 (reference 02) is affirmed. The claimant is not able to work and available for work effective July 1, 2012. Benefits are withheld until such time as the claimant obtains a medical release to work.

**NOTE TO EMPLOYER:**

If you wish to change your mailing address of record please access your account at:

<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v=mpCM8FGQoY>

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs