

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JAYDEN L SCHWICKERATH
Claimant

APPEAL 17A-UI-00754-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMERS UNION COOPERATIVE
Employer

**OC: 12/11/16
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions
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 January 12, 2017, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 30, 2017. The claimant participated personally. The employer participated by way of Mark Davis. Witnesses included Andrea Detbarn, Nick Snitker, and Brian Snitker. Claimant Exhibit A was 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:

Is the claimant able to work and available for work effective December 11, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed last employed full-time as an assistant manager at Farmer's Union Cooperative, and last performed work on September 5, 2016. She was separated from employment on December 13, 2016.

The claimant had a cesarean section delivery ("c-section") on September 6, 2016. Following her surgery, the claimant had medical restrictions that prevented her from lifting more than five pounds, bending or stooping (Claimant Exhibit A). The claimant's restrictions have been extended and are still in effect at the date of hearing. The claimant has additional medical appointments scheduled in the near future but is unsure when her medical restrictions will be lifted. The claimant acknowledged her medical restrictions are extensive inasmuch as she questioned how she could even tie her shoes with the imposed restrictions.

The claimant has denied working for any employer since this employer. She has been observed working and has acknowledged she has "volunteered" as a waitress for a friend at the First Chance Saloon but was not paid wages. It is unclear what impact her volunteering has had on her medical condition. The claimant is seeking full-time employment and has applied for

jobs at Casey's, Subway and McDonalds, amongst others. The claimant acknowledges and has been told by at least one employer, that she is medically unable to perform the jobs she is applying for, given her existing restrictions. The claimant has applied for one job as a telemarketer which meets her existing work restrictions. The claimant has reliable transportation and childcare available.

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 December 11, 2016.

Iowa Code § 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.

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 physician 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 Section 96.4-3. The claimant has the burden to show she is able to work, available for work, and earnestly and actively seeking work. To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Since the claimant's employment ended on December 13, 2016, the claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. In this case, the claimant currently has medical restrictions including a five pound weight limit and no bending or stooping. The claimant is uncertain when the restrictions will be lifted, and has additional medical treatment scheduled. These are extensive restrictions that would prevent an individual from performing many types of work (or even in the claimant's words, even tying her shoes.)

The claimant has applied for one position within her restrictions as a telemarketer. The claimant acknowledged many of the jobs for which she is applying for that she cannot actually perform due to her medical restrictions, and is unsure when she will be medically released able to perform the jobs for which she is applying. Based on the evidence presented, the administrative law judge concludes that the claimant has not satisfied her burden to show she is able to work, available for work, and earnestly and actively seeking work that she can perform. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given any medical restrictions.

The claimant is advised that if she returns to work, even on a part-time basis, she must report any wages earned, so long as she continues to file her continued weekly claim for benefits.

DECISION:

The January 12, 2017 (reference 03) decision is affirmed. The claimant is not able to and available for work effective December 11, 2016. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs