

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALLISON E HOFFMAN**  
Claimant

**MIDWEST PROFESSIONAL STAFFING LLC**  
Employer

**APPEAL 15A-UI-06207-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/19/15**  
**Claimant: Appellant (4)**

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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 May 19, 2015, (reference 03) 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 July 9, 2015. Claimant participated with her spouse, Larry Hoffman and daughter, Jennifer Hoffman. Employer participated through staffing manager, Michael Jontz.

**ISSUE:**

Is the claimant able to and available for work effective May 3, 2015?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant had surgery on Thursday, May 7. Her physician released her with restrictions on Tuesday, May 26 with a possible full release on June 15. (Claimant's Exhibit A) She was separated from her employment on April 17, 2015.

**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 from May 7 through May 26, 2015.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as

defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 medical practitioner and has not been released as being able to 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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Inasmuch as the medical condition is not work related and the treating physician has not released the claimant to return to work with or without restriction, she has not established her ability to work from May 7 through May 26, 2015. Because her assignment ended on April 17, 2015, she is not required to be able to perform the same job duties. Since she was available for work the majority of the week ending May 9, 2015, benefits are allowed for that week.

**DECISION:**

The May 19, 2015, (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant is not able to work and available for work from the week beginning

May 10 through May 26, 2015. Benefits are allowed for the three weeks between April 19 and the week ending May 9, 2015, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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