

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

GINO L ONEAL
Claimant

FRONTIER DUBUQUE HOTELS LLC
Employer

APPEAL NO. 15A-UI-01272-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/28/14
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 20, 2015, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on February 24, 2015. Claimant participated personally and was represented by attorney Jim Roth. Employer participated by Stacy Farrey. Employer's Exhibits One through Four were admitted into evidence.

ISSUE:

The issue in this matter is whether 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: Claimant was injured in an accident that was non-work-related in February 2014. Claimant returned to work light duty, using only her left arm in June 2014. Claimant had a doctor's release allowing her to work at that time, lifting only 5 to 10 pounds.

On August 6, 2014 claimant re-broke a rod which had been placed in her right arm while working at another job. Claimant went to her doctor after this injury and on August 25, 2014 claimant's doctor released claimant to return to work light duty, "if available," with no use of her right arm. Employer declined to have claimant return to work as employer stated that it did not have light duty work available for claimant where she would not use her right (dominant) arm at all. Claimant has subsequently had additional surgery on her injured right arm, but has yet to receive a further release to return to work at all.

REASONING AND CONCLUSIONS OF LAW:

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.

Inasmuch as the injury was non-work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The decision of the representative dated January 20, 2015, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits at this time as she is not able to return to work.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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