

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**BREANA D SCROGGINS**  
Claimant

**WELLS FARGO BANK NA**  
Employer

**APPEAL 15A-UI-07798-DGT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/14/15**  
**Claimant: Respondent (4)**

---

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated June 30, 2015, (reference 01) that held claimant able to and available for work. After due notice, a hearing was scheduled for and held on August 10, 2015. Employer participated by Francis Landolphi, Hearing Representative.

**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 a full-time employee for employer beginning on August 18, 2014 through July 13, 2015. Claimant requested to have her hours reduced for personal reasons on or about June 25, 2015. Employer continued to have full-time wages available for her through August 4, 2015. Claimant was separated from her employment on August 5, 2015 and became able and available for employment at that time.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective June 14, 2015 through August 4, 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 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(23) and (35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

(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.

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. Emp't Appeal Bd.*, 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.*

Claimant removed herself from labor market during the dates of her employment, and her hours were later reduced at her request. She was not able to and available for work during that time. She may have become able to work and available for work on or about August 5, 2015 once she was separated from employment provided she met all other eligibility requirements. Benefits are withheld beginning on June 14, 2015 through August 4, 2015. Benefits shall be allowed effective August 5, 2015 provided she meets all other eligibility requirements.

**DECISION:**

The decision of the representative dated June 30, 2015, (reference 01) is modified in favor of the appellant. Claimant is not eligible to receive unemployment insurance benefits, effective June 14, 2015. She may be eligible for benefits on or about August 5, 2015 provided she meets all other eligibility requirements.

---

Duane L. Golden  
Administrative Law Judge

---

Decision Dated and Mailed

dlg/pjs