

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ARELIA O COLE**  
Claimant

**APPEAL NO: 07A-UI-08729-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ING USA ANNUITY AND LIFE  
INSURANCE COMPANY**  
Employer

**OC: 08/05/07 R: 02  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 11, 2007, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on October 1, 2007. Claimant participated. Employer did not participate. Claimant's Exhibit A was received.

**ISSUE:**

The issue is whether claimant is able to and available for work effective August 5, 2007.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed as a full time customer service representative (CSR) from September 26, 2006. On June 25 claimant left work due to arm and chest pain and stress. She was restricted from working in stressful situations. She filed a workers' compensation claim, which was denied and an appeal is pending. Her application for short term disability was also denied on August 10. An MRI in August found a herniated disc and she also has muscle spasms the treating doctors believe she incurred from sitting at the computer at work. The treating neurologist restricted her from computer work as of September 14, 2007. No doctor has opined that any of claimant's medical conditions are work related. No full medical release date is anticipated.

**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 August 5, 2007.

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".

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 the medical condition has not been established to be work-related and the treating physician has not released the claimant to return to work without restriction, the claimant has not established her ability to work in her regular job. Employer is not obligated to accommodate a non-work-related medical condition, thus until claimant is released to perform her full work duties, she is not considered able to or available for work.

**DECISION:**

The representative's decision dated September 11, 2007, reference 02, is affirmed. The claimant is not able to work and available for work effective August 5, 2007. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs