

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENISE R TATE
Claimant

APPEAL NO. 11A-UI-05167-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

COVENANT MEDICAL CENTER
Employer

**OC: 02-27-11
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 5, 2011, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 13, 2011. The claimant did participate. The employer did participate through (representative) Deborah Tyler, human resources specialist, and Susan Bechthold, lead coordinator. Employer's Exhibit One was entered and received into the record.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as an ambulatory surgery assistant beginning on February 18, 2008. She sustained a back injury that eventually resulted in back surgery. The claimant was on medical leave until her FMLA was exhausted on January 16, 2011. At that time, her position as a surgery assistant was filled. The employer required the claimant to locate another job in the facility that she could perform. The claimant began working as an admissions clerk after she recovered from her last surgery. The admissions clerk position only allows her to work 20 hours per week. The claimant can physically work more than 20 hours per week. She makes less per hour than when she was an ambulatory surgery assistant. The claimant picks up extra hours of work whenever she can. She is able to and available for work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work February 21, 2011.

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.

While the claimant is not able to perform her former job as an ambulatory surgery assistant, she is able to work performing other job duties. The employer is only offering her 20 hours per week. The claimant is able to and available for work effective February 21, 2011. Accordingly, benefits are allowed.

DECISION:

The April 5, 2011, reference 01, decision is reversed. The claimant is able to work and available for work effective February 21, 2011. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw