

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOANN KONCHAN

Claimant

APPEAL NO. 13A-UI-01418-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

QPS EMPLOYMENT GROUP INC

Employer

OC: 12/16/12

Claimant: Appellant (4)

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness or Injury

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated January 28, 2013, reference 01, that held she was unable to work for the period from December 30, 2012 through January 5, 2013, and benefits are denied. A hearing was held on March 5, 2013. The claimant participated. Rhonda Hefter, HR Supervisor, participated for the employer.

ISSUE:

The issue is whether claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as an hourly paid janitor for the employer in December 2012. The employer informed claimant and other hourly employed workers of a holiday plant shutdown from 6:00 a.m. on December 21 through the same time on January 2, 2013. Claimant normally worked Sunday through Friday.

Claimant filed an unemployment claim effective December 16 due to the shutdown, and she reported her wages earned for the week ending December 22 in the amount of \$160.00. She received a partial UI benefit of \$96.00. She received a full \$205.00 WBA the week ending December 29 as she did not work. Claimant worked a full shift on January 2, and three hours on January 3 when she left due to an injury. A doctor restricted claimant from work for the period from January 4 through 6.

Claimant returned to work on January 7 with restrictions and the employer placed her on light duty that remains through the date of this hearing. Claimant ceased claiming for benefits after the week ending January 5. She reported wages of \$110.00 for the week ending January 5 and received a partial benefit of \$146.00.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge concludes there is no availability disqualification imposed on claimant for the three weeks ending January 5, 2013. Claimant is eligible for benefits.

Claimant was limited in her work the week ending December 22 due to the employer plant shutdown and she is entitled to partial unemployment. She is entitled to a full benefit the week ending December 29 as no work was available. She was limited to less than a full work week due to the plant shutdown for Sunday and Monday, and worked a full day on Tuesday with some work on Wednesday. Since claimant was either limited and/or worked the majority of the week ending January 5, no disqualification is imposed.

Since claimant has returned to light duty work on January 7 and continues this pattern of employment, she is no longer claiming for benefits.

DECISION:

The decision of the representative dated January 28, 2013, reference 01, is modified. The claimant meets the availability requirements of the law for the three weeks ending January 5, 2013, and is eligible for benefits.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll