

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LINDA L NURRE
Claimant

ABC LEARNING EARLY CHILDHOOD
Employer

APPEAL NO. 14A-UI-06784-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/01/14
Claimant: Appellant (4)**

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 26, 2014, reference 01, which held claimant was not able and available for work. After due notice, a hearing was scheduled for and held on July 23, 2014. Claimant participated personally. Employer participated by Melissa Donovan, Manager. Exhibit A was 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 is currently employed by employer but is on medical leave. Claimant had surgery on one of her hands on April 17, 2014. On May 26, 2014 claimant was released back to work with restrictions. Employer was not able to find suitable work for claimant because the restriction would not allow claimant to pinch or grasp items, and she could not lift more than two pounds. Claimant continued to have this restriction until on or about June 29, 2014 when she was released back to work without restrictions.

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.

The Supreme Court ruled that a claimant with a non-work-related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

Inasmuch as the medical condition is not work related and the treating physician had not released the claimant to return to work without restriction until June 29, 2014, she had not established her ability to work while still an employee of employer effective through the week ending June 22, 2014. While she may be able to perform light work duties, the employer is not obligated to accommodate a non-work-related medical condition, and since she had not been released to perform her full work duties, she is not considered able to or available for work through June 22, 2014. Since that time claimant has been released back to work without restrictions. She is therefore able and available for work effective June 29, 2014 and is eligible for benefits beginning on that date.

Inasmuch as the illness or injury was not work related and the treating physician has released the claimant to return to work, the claimant has established the ability to work effective June 29, 2014. Benefits are withheld beginning June 1, 2014 through June 22, 2014. Benefits shall be allowed effective June 29, 2014.

DECISION:

The decision of the representative dated June 26, 2014, reference 01, is modified in favor of the claimant. Claimant was not eligible to receive benefits for the dates beginning on June 1, 2014 through June 22, 2014. Claimant is eligible to receive unemployment insurance benefits, effective June 29, 2014, provided claimant meets all other eligibility requirements.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs