

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ELIZABETH A PALMER**  
Claimant

**APPEAL NO. 13A-UI-03547-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 02/17/13**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Elizabeth Palmer filed a timely appeal from the March 14, 2013, reference 03, decision that denied benefits effective February 17, 2013 based on an agency conclusion that Ms. Palmer was not available for work within the meaning of the law. After due notice was issued, a hearing was held on June 4, 2013. Ms. Palmer participated. Exhibits A through E and Department Exhibits D-1, D-2, D-3, D-5 and D-6 were received into evidence.

**ISSUE:**

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Elizabeth Palmer established a claim for unemployment insurance benefits that was effective February 17, 2013. Ms. Palmer's base period for purposes of the claim consists of the fourth quarter of 2011 and the first, second and third quarters of 2012. During the fourth quarter of 2011, Ms. Palmer had only \$188.03 in wages from a single employer, Mollen Immunization Clinics II, L.L.C., for which she worked part time, temporary as part of a temporary immunization clinic. During the first quarter of 2012, Ms. Palmer had no wages. During the second quarter of 2012, Ms. Palmer had \$3,192.00 in wages from employer Hawkeye Health Services, Inc., where she worked as a part-time desk case manager. Also during the second quarter of 2012, Ms. Palmer had \$262.50 in wages from Ankeny Community School District, where she worked as a part-time, on-call substitute nurse. During the third quarter of 2012, Ms. Palmer had \$3,408.00 in wages from employer Hawkeye Health Services. During the fourth quarter of 2012, Ms. Palmer had \$2,358.95 in wages from Hawkeye Health Services. During the first quarter of 2013, Ms. Palmer had \$1,606.50 in wages from Hawkeye Health Services.

Ms. Palmer is a registered nurse and reports that she holds a master's degree.

Ms. Palmer's most recent employment, other than part-time on-call employment, was the part-time employment with Hawkeye Health Services. Ms. Palmer started that employment in

April 2012. Ms. Palmer initially worked 20 hours per week for Hawkeye Health Services. In July 2012, Ms. Palmer reduced her work hours at Hawkeye Health Services to ten hours per week. Mr. Palmer's availability for work with that employer continued at the reduced level until February 19, 2013, when Hawkeye Health Services discharged Ms. Palmer from the employment for attendance. Ms. Palmer's claim for unemployment insurance benefits followed that same week.

The reduction in Ms. Palmer's availability for work at Hawkeye Health Services followed a medical appointment Ms. Palmer had at Mercy Johnston Medical Clinic in Des Moines on July 18, 2012. The provider noted Ms. Palmer's chief complaint as a sore gum and that she was wanting a work release note, that is, to restrict her availability for work at Hawkeye Health Services. At the time of the appointment, the provider took a medical history report from Ms. Palmer. Ms. Palmer reported 17 active health problems and that she was taking 33 medications. Some of those medications were prescription medications. Many were supplements of one kind or another. The provider also noted a psychiatric component to the health provider's evaluation of Ms. Palmer. All but one word of that information has been expunged from the record of the July 18, 2012 visit as that record was presented for the appeal hearing.

While the administrative law judge is not a medical or mental health professional, he noted during the hearing that Ms. Palmer is an intelligent, articulate, exceptionally intense person who appears to have some sort of mental health issue that likely factors substantially in the restrictions Ms. Palmer has made on availability for work.

During the July 18, 2012 appointment, Ms. Palmer also complained of shortness of breath. The health care provider referred Ms. Palmer for a cardiology evaluation and treatment consult. The provider noted, "Will await cardiology evaluation to rule out cardiac cause of her shortness of breath. *In the meantime* did give her a note stating she should work no more than ten hours per week due to her shortness of breath." [Emphasis added.] In other words, the medically based reduction in work hours was intended to be temporary and last only until the cardiology consult.

Ms. Palmer has provided no more recent medical documentation than the documentation from the July 18, 2012 appointment. Ms. Palmer reports having been exposed to toxic mold in her home and multiple ongoing health issues relating to that exposure. Ms. Palmer reports that further evaluation of her shortness of breath revealed the issue to be severe asthma. Ms. Palmer reports that this diagnosis came after an August 28, 2012 cardio stress test. Ms. Palmer reports she *has diagnosed herself* with leaky gut syndrome. Ms. Palmer reports she has a severe food allergy and can only eat eight to ten food items. Ms. Palmer reports she *cannot work under fluorescent lighting and still cannot work more than ten hours per week*.

At the time Ms. Palmer commenced working for Hawkeye Health Services, she was also employed by the Ankeny Community School District as a substitute school nurse. Ms. Palmer continues in the on-call position with Ankeny Community School District, but has not worked for the district since June 2012.

In September 2012, the Social Security Administration sent Ms. Palmer notice that she was deemed disabled and that she would be eligible for benefits effective December 2012. Ms. Palmer has provided two pages of the four-page notice. Ms. Palmer reports that she is restricted to earning no more than \$1,050.00 per month in light of her disability determination.

Ms. Palmer continues to restrict her availability to no more than ten hours per week. Ms. Palmer desires employment that would not exceed ten hours per week and that would allow

her to work from home. Ms. Palmer has geared her search for work to opportunities that meet these restrictions.

### **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 24.22(1)a and (2) provide:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The weight of the evidence in the record establishes that Ms. Palmer is not available for work within the meaning of the law since she established the claim for unemployment insurance benefits that was effective February 17, 2013. Since Ms. Palmer filed her claim for benefits, she has not been available for work to the same extent as existed when she acquired the base

period wage credits upon which her eligibility is based. Ms. Palmer has presented insufficient evidence to establish that the ten hours of work per week medical restriction extended beyond the cardiology consult she indicates she had in August 2012. Ms. Palmer has presented no medical documentation more recent than July 2012, despite reporting an extensive list of ailments that significantly impact on and limit her availability for work. Ms. Palmer advises she must restrict her income to avoid impacting her eligibility for Social Security Disability Insurance benefits. Ms. Palmer has placed so many restrictions on her work availability that is highly unlikely she will be considered for any employment other than part-time, on-call employment. Even then, the weight of the evidence indicates that Ms. Palmer's considerable restrictions on her availability would likely dissuade even those employers from using her services. All of this is despite the fact that Ms. Palmer is a registered nurse who purports to hold a master's degree. See Iowa Administrative Code rule 871 IAC 24.23 for the many ways in which a person can render themselves unavailable for work within the meaning of the law. Several of these apply to Ms. Palmer.

Benefits are denied effective February 17, 2013 and the availability disqualification continued as of the June 4, 2013 appeal hearing. The disqualification will continue until Ms. Palmer provides sufficient, up-to-date documentation concerning any medical and/or mental health condition that impacts on her availability for work, until she demonstrates that she is engaged in an active and earnest search for work, and until she demonstrates she is indeed available for work one might expect a registered nurse to perform in the Des Moines metropolitan labor market.

**DECISION:**

The Agency representative's March 14, 2013, reference 03 is affirmed. The claimant has not demonstrated availability for work since she established her claim for benefits. Benefits are denied effective February 17, 2013 and the availability disqualification continued as of the June 4, 2013 appeal hearing. The disqualification will continue until the claimant provides sufficient, up-to-date documentation concerning any medical and/or mental health condition that impacts on her availability for work, until she demonstrates that she is engaged in an active and earnest search for work, and until she demonstrates she is indeed available for work one might expect a registered nurse to perform in the Des Moines metropolitan labor market.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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