

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>MARIE B GREMM</b> Claimant  <b>IOWA WORKFORCE DEVELOPMENT DEPARTMENT</b>	<b>68-0157 (9-06) - 3091078 - EI</b>  <b>APPEAL NO. 07A-UI-01522-H2T</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b>  <b>OC: 12-17-06 R: 04</b> <b>Claimant: Appellant (1)</b>
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Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the February 5, 2007, reference 02, decision that found the claimant not able to and available for work and thus denied benefits as of January 16, 2007. After due notice was issued, a hearing was held on February 27, 2007. The claimant did participate.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant left work to have a non-work-related surgery on January 16, 2007. She was released to return to work full time without restriction on February 26, 2007.

**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 from January 16, 2007 through February 26, 2007.

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 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 injury was not work-related and the treating physician did not release the claimant to return to work until February 26, 2007, the claimant has not established ability to work. Benefits are withheld from January 16, 2007 until February 26, 2007, when the claimant obtained a full medical release to return to work.

**DECISION:**

The representative's decision dated February 5, 2007, reference 02, is affirmed. The claimant is not able to work and available for work effective January 16, 2007 until February 26, 2007. The claimant is able to and available for work effective February 26, 2007.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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