

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
MAGDALENA HERRERA Claimant	APPEAL NO: 13A-UI-10986-S2T
IOWA WORKFORCE DEVELOPMENT DEPARTMENT	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 01/20/13 Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Magdalena Herrera (claimant) appealed a representative's September 18, 2013, decision (reference 07) that concluded she was not eligible to receive unemployment insurance benefits because she was unable to perform work as of May 19, 2013. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on October 21, 2013. The claimant did participate. The claimant offered and Exhibit A was received into evidence. Exhibit D-1 was admitted into evidence.

ISSUE:

The issue is whether the 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 that: The claimant filed for unemployment insurance benefits with an effective date of January 20, 2013. She had surgery on May 23, 2013, and her physician indicated on August 30, 2013, that she had not been released to work. The claimant received unemployment insurance benefits from for the twelve-week period ending August 10, 2013. On October 16, 2013, the claimant's physician released her to return to work with a 35-pound lifting restriction.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant was not able to perform work as of May 19, 2013.

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.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant is considered to be unable for work until her doctor released her. The claimant is disqualified from receiving unemployment insurance benefits beginning May 19, 2013, due to her unavailability for work. The claimant was released to return to work with restrictions by her physician. She is considered to be available for work because her physician stated she was able for work. The claimant is not disqualified from receiving unemployment insurance benefits effective of October 13, 2013.

DECISION:

The representative's September 18, 2013, decision (reference 07) is modified in favor of the appellant. The claimant is disqualified from receiving unemployment insurance benefits as of May 19, 2013, because she was not able to work. The claimant is not disqualified from receiving unemployment insurance benefits effective of October 13, 2013.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css