

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARY I LUTHER
Claimant

RUSSELL BRANDS LLC
Employer

APPEAL NO. 15A-UI-10011-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/01/15
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 27, 2015 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 21, 2015. Claimant participated personally and was represented by paralegal Jim Hamilton. Employer participated by Kristin Russell.

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 has worked for employer since 2007. Claimant states that she was injured on the job on March 10, 2015. On that date claimant continued to work, but told her employer of the accident that twisted her back and knee. Claimant continued to work in her same job for the next month and a half. During that time claimant went to a company requested doctor on or around April 1, 2015. The doctor examined claimant and examined the routine of claimant at work. The doctor made an assessment that the injury was not work related and instead was as a result of claimant's obesity.

Claimant went to another doctor of her choosing on multiple occasions. On or around April 29, 2015 this doctor of claimant's choosing deemed that claimant's injury was work-related and that claimant should be placed on permanent work restriction whereby claimant cannot do activities that involve lifting of over 25 pounds or involves repetitive twisting and bending. Employer stated that they did not have any work activities that fit the restrictions of claimant as claimant's abilities and work history fit only within the production area. Employer has stated that claimant remains on leave until May of 2016 as claimant has a leave of absence until that date.

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 initial question before the administrative law judge is whether the claimant has established that the injury is work related. In evaluating this question, two facts stand out: The claimant worked her job for the next month and a half after the injury without reagggravating the problem; and claimant first went to the company requested doctor who not only did a full evaluation of claimant, but also an evaluation of the work being done in determining that the injury was not work-related. The fact that a second doctor issued a work restriction only after seeing claimant multiple times and after claimant had worked for a month and a half after the first incident lessens the administrative law judge's weight applied to such medical opinion.

At the present time claimant cannot work on the production line. Claimant's work history and experience limit employer's jobs available to claimant to only those involving production. Inasmuch as the injury was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The decision of the representative dated August 27, 2015, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits until claimant receives a full medical release to return to work.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs