

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANET T THOMPSON
Claimant

APPEAL 18A-UI-00214-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 10/29/17
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the December 28, 2017, (reference 02) decision that denied benefits effective December 10, 2017 finding the claimant was not able to and available for work. After due notice was issued, a hearing was held by telephone conference call on January 30, 2018. Claimant participated. Claimant's Exhibit A was received.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant had a surgical procedure for cancer on December 13, 2017. Her treating physician indicated that she could return to work without restrictions the next day, but the claimant chose not to work as she physically did not feel like she was able to do so. The claimant removed herself from work from December 13 until January 3, 2018. The claimant is not able to and available for work at all for the four week period ending January 6, 2018.

The employer has reduced the claimant's hours of work beginning in the fall of 2017. She is not expecting to see more hours until sometime in March 2018. The claimant works fourteen hours per week at Hy-Vee at an hourly rate of \$9.25. Her gross earnings per week are \$129.50. She has inaccurately been reporting her earnings as only \$50.00 per week since the week ending January 6, 2018. For each of the four weeks ending January 27, 2018 the claimant's reported earning shall be changed from \$50.00 per week to \$129.50 per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

Iowa Admin. Code r. 871-24.23(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.

While the claimant's physician released her to return to work effective December 14, 2017, she physically did not feel well enough to return to work until January 3, 2018. Thus, she is not considered able to and available for work for the four week period from December 10, 2017 through January 6, 2018.

Thereafter she is considered able to and available for work and is required to properly report her wages earned each week.

REMAND:

The issue of claimant's incorrect reporting of earned wages is remanded to the Investigations and Recovery unit for further review as they deem necessary.

DECISION:

The December 28, 2017, decision is modified in favor of the appellant. The claimant is not able to work and available for work for the four week period ending January 6, 2018. Claimant is able to work and available for work effective the week beginning January 7, 2018 and benefits are allowed as of that date, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs