

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHAPMAN, TERI, R
Claimant

APPEAL NO. 12A-UI-15261-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 11/25/12
Claimant: Appellant (5)

Iowa Code Section 96.4(3) - Able & Available

STATEMENT OF THE CASE:

Teri Chapman filed a timely appeal from the December 19, 2012, reference 02, decision that denied benefits effective November 25, 2012, based on an agency conclusion that she did not meet the work availability requirements because she was unduly restricting her availability for work. After due notice was issued, a hearing was held on February 6, 2013. Ms. Chapman participated. The hearing in this matter was consolidated with the hearing on appeal number 12A-UI-15260-JTT. The Exhibits A through G were received into evidence.

ISSUE:

Whether Ms. Chapman has met the work ability and work availability requirement of Iowa Code section 96.4(3) since she established her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Teri Chapman established a claim for unemployment insurance benefits that was effective November 25, 2012. Until November 30, 2012, Ms. Chapman had been on an approved medical leave of absence from her full-time employment at the Iowa Correctional Institute for Women. Ms. Chapman had worked as a corrections officer assigned to the 10:00 p.m. to 6:00 a.m. shift. The employer ended the employment when Ms. Chapman asked the employer to extend an unpaid leave of absence beyond November 30, 2012. In connection with the leave of absence, Ms. Chapman had also applied for long-term disability benefits. Prior to commencing her leave of absence, Ms. Chapman had asked the employer to cut her work hours to part time, 20 to 30 hours per week. The employer refused that request. Prior to commencing her leave of absence, Ms. Chapman's duties had required that she climb two flights of steps when she made her rounds. Due to chronic back issues, Ms. Chapman found that effort painful and required epidural shots to reduce the pain.

Ms. Chapman is a military veteran. Ms. Chapman's medical issues include chronic migraine, chronic degenerative bone disease, and bipolar disorder. Ms. Chapman's medical history includes suffering a broken neck and fractured skull. During the time when she was on an

approved leave of absence, Ms. Chapman had a follow-up visit with her primary care physician, Steven C. Hill, M.D., on August 20, 2012. Ms. Chapman has provided a cursory record of that visit that indicates only that Ms. Chapman was to be re-evaluated in 90 days. The 90th day would have been November 20, 2012. Ms. Chapman did not return to Dr. Hill for that further evaluation. Ms. Chapman has never returned to Dr. Hill for re-evaluation. Dr. Hill has never released Ms. Chapman to return to work.

Ms. Chapman's base period for purposes of the claim she established on November 25, 2012 consists of the third and fourth quarters 2011 and the first and second quarters of 2012. During those four quarters, Ms. Chapman had her highest earning quarter during the third quarter 2011. Ms. Chapman's average weekly wage during the third quarter of 2011 was \$960.35. Ms. Chapman's hourly wage at the Iowa Correctional Institute for Women had been \$25.95.

After Ms. Chapman's employment ended on November 30, 2012, she immediately commenced a search for new full or part-time employment and made at least two work contacts per week. Ms. Chapman applied for a cashiering job at Wal-Mart. Ms. Chapman applied for a position at True Value. Both positions would likely have been unworkable in light of Ms. Chapman's chronic health issues.

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.

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.

There are multiple issues with Ms. Chapman's work search. First and foremost, she has never been released by a doctor to return to work after going off work for an extended period in connection with multiple chronic illnesses and in connection with ongoing pursuit of long-term disability benefits. Ms. Chapman has presented insufficient evidence to establish that she would be physically and medically capable of performing any position that she has applied for.

Ms. Chapman has never been released by a doctor to return to work after being taking completely off work by a doctor. Ms. Chapman was supposed to return to her doctor for re-evaluation on or about November 20, 2012, but had no further contact with the doctor after August 20, 2012. In addition, at the time Ms. Chapman established her claim for benefits, she had a pending application for long-term disability benefits. These things together indicate, by a preponderance of the evidence, that Ms. Chapman has not met the work ability and availability requirements since she established her claim for benefits. Benefits are denied effective November 25, 2012. The able and available disqualification continued as of the January 31, 2013 hearing date. If Ms. Chapman believes she meets the able and available requirement for the period beginning February 1, 2013, she should present Workforce Development with competent medical evidence showing she has been released to return to some type of full-time employment that laborers perform in the Newton labor market.

DECISION:

The Agency representative's December 19, 2012, reference 02, decision is modified as follows. The claimant has not demonstrated by competent medical evidence that she has been released by a doctor to return to work. The claimant has not met the work ability and availability requirements since she established her claim for benefits. Benefits are denied effective

November 25, 2012. The able and available disqualification continued as of the January 31, 2013 hearing date. If the claimant believes she meets the able and available requirement for the period beginning February 1, 2013, she should present Workforce Development with competent medical evidence showing she has been released to return to some type of full-time employment that laborers perform in the Newton labor market.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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