

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHELLE K ROBNETT**  
Claimant

**APPEAL 19A-UI-01241-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ST AMBROSE UNIVERSITY**  
Employer

**OC: 01/06/19**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 8, 2019, (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to and available for work effective January 13, 2019. The parties were properly notified of the hearing. A telephonic hearing was held on February 27, 2019. The claimant, Michelle K. Robnett, participated and was represented by Heather Carlson, Attorney at Law. The employer, St. Ambrose University, participated through Kathleen Andresen, Department Chair of Department of Nursing; Sandra Cassady, Dean of College of Health and Human Services and Vice President for Strategic Initiatives; and Audrey Blair, Director of Human Resources; and was represented by Judith Hermann, Attorney at Law. Claimant's Exhibits A through D and Employer's Exhibit 1 through 12 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is the claimant able to work and available for work effective January 13, 2019?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as an Assistant Professor, from August 15, 2015, until January 9, 2019, when she was discharged for failing to maintain an active nursing license. Claimant had outpatient surgery on January 18, 2019. She explained that she was in prep for surgery all day on January 17, and then she had a procedure on January 18. Claimant ran a fever for approximately 48 hours after surgery. She was then healed and ready to resume working. Claimant provided a doctor's note stating she was released to return to work with no restrictions effective January 21, 2019. (Exhibit B)

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work. Benefits are allowed, provided she is otherwise eligible.

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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, claimant presented documentation and credible testimony indicating she had a minor outpatient surgery that did not affect her ability to work for the majority of any work week. Claimant has established that she was physically able to work effective January 13, 2019. Accordingly, benefits are allowed, provided she is otherwise eligible.

**DECISION:**

The February 8, 2019, (reference 02) unemployment insurance decision is reversed. Claimant was able to work effective January 13, 2019. Benefits are allowed, provided she is otherwise eligible.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

lj/scn