

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICIA A CHRISTIANSEN
Claimant

APPEAL NO: 06A-UI-08960-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LEWIS CENTRAL COMMUNITY
SCHOOL DISTRICT**
Employer

**OC: 08/13/06 R: 01
Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Patricia Christiansen, filed an appeal from a decision dated August 31, 2006, reference 01. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on September 21, 2006. The claimant participated on her own behalf. The employer, Lewis Central Community School District (Lewis), participated by Business Manager Art Hill and Food Service Director Dean Harrifeld.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Patricia Christiansen began employment with Lewis on September 5, 2002. She is a part-time food service worker. All food service workers in the district must be able to lift at least 40 pounds.

The claimant had surgery on her wrist in February 2006, due to a non-work-related injury some years before. She anticipated being released in six weeks, but complications arose and she was released with a 10-pound lifting restriction on April 10, 2006. She then had a second surgery on July 24, 2006. As of the date of the hearing, she has not been fully released to return to work without restrictions and does not have another appointment with her doctor until the end of October 2006.

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 24.23(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 claimant had not been fully released to return to her regular job duties without restrictions. As this is a non-work-related medical problem, a full release is required under the provisions of Hedges v. IDJS, 368 N.W.2d (Iowa App. 1985). As of the current date, the claimant is not eligible for benefits, as she is not able and available to return to her regular job duties.

DECISION:

The representative's decision of August 31, 2006, reference 01, is affirmed. Patricia Christiansen is not eligible for benefits, as she is not able and available to return to her regular employment.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw