

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MANDA J BRIMEYER**  
Claimant

**PARCO LTD**  
Employer

**APPEAL 18A-UI-02565-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/07/18**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the February 8, 2018, (reference 02) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on March 23, 2018. Claimant participated. Employer participated through human resource director Jessica Walsh. Department's Exhibit D-1 was received.

**ISSUES:**

Is the appeal timely?  
Is the claimant able to work and available for work effective January 7, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The decision was mailed to the parties on February 8, 2018, and the appeal was due February 12, 2018. Claimant filed her appeal on February 12, 2018, which was within the appeal period.

Claimant was employed as a full-time crew chief at Wendy's restaurant through January 8, 2018. Her last day of work was January 4, 2018, when she spoke to general manager Allison who approved indefinite time off from scheduled shifts due to medical reasons until she could obtain a medical release. Allison did not request a medical excuse. Claimant remains under medical care and is seeking Social Security disability benefits.

**REASONING AND CONCLUSIONS OF LAW:**

Because the claimant filed her appeal within the appeal period, the appeal is timely. For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective January 7, 2018.

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. 871-24.22(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.

(Emphasis added.)

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 medical practitioner and has not been released as being able to work.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

Since the employment ended on January 9, 2018, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Inasmuch as the treating physician has not released the claimant to return to work, she has not established her ability to work.

**DECISION:**

The February 8, 2018, (reference 02) unemployment insurance decision is affirmed. The claimant's appeal is timely. She is not able to work and available for work effective January 7, 2018. Benefits are withheld until such time as the claimant obtains a medical release to return to work.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs