

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KRISTINA L TINDALL
Claimant

APPEAL NO. 13A-UI-07429-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 05/19/13
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 19, 2013, (reference 02) unemployment insurance decision that denied benefits. After due notice was issued, a hearing was held on July 29, 2013. Claimant participated. Employer did not participate. Claimant's Exhibit A was entered and received into the record.

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: Claimant is employed full time as primarily a donut maker and kitchen worker. The claimant began her employment on January 3, 2013 as a kitchen worker primarily and remains employed through date of hearing. When the claimant was hired she made it clear to the employer that she had a knee injury while working for another employer and that she had limitation due to that injury and that sometime in the future she would need to be off work for knee surgery. The employer hired her anyway and provided accommodation needed by the claimant to perform all of her required job duties. The claimant was off work from the actual surgery and recuperation time from May 22, 2013 through June 4, 2013. On June 4 she received a release to return to work from her treating physician with work restrictions. The employer had accommodated restrictions that were only a little more restrictive prior to her surgery. The claimant returned to work as a cashier. After working for three hours and twenty minutes she asked for a chair to sit down in and was told at that time that the employer had decided not to accommodate her work restrictions any longer. When the claimant worked in the kitchen she had been allowed to sit down periodically.

Thereafter the employer did not let the claimant return to work until her restrictions were changed from sedentary work to moderate work effective June 26, 2013.

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 § 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 (22) 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.

The employer hired the claimant to work knowing she had work restrictions that they did accommodate. The claimant notified the employer on May 16 that she would be off for her surgery beginning on May 22. The employer chose not to schedule the claimant for the majority

of the week. The claimant was available for work the majority of the week that included May 22, thus she is considered able to and available for work the week ending May 25.

The claimant is not able to and available for work from May 26 until June 4, 2013 when she returned to work under light-duty work restrictions very similar to that which the employer had accommodated previously. The claimant's physician had her off work entirely for the period from May 26 through June 4. The employer initially accommodated the claimant then determined not to, despite the fact that the claimant was specifically able to perform all the work required of her. Under these circumstances the administrative law judge determines that the claimant was able to and available for work from June 4 through date of hearing. Accordingly, benefits are allowed.

DECISION:

The June 19, 2013, reference 02, decision is modified in favor of the appellant. The claimant is able to work and available for work effective for the week ending May 25, 2013. She is not able to and available for work for the period between May 26, 2013 and June 4, 2013. She is able to and available for work from June 5, 2013 through date of hearing. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css