

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLENE A ALLAIRE
Claimant

APPEAL NO: 12A-UI-05150-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DISCOVERY LIVING INC
Employer

OC: 03/18/12
Claimant: Appellant (2/R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Charlene Allaire (claimant) appealed a representative's April 26, 2012 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was unable to work for Discovery Living (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for May 25, 2012. The claimant was represented by William Nicholson, Attorney at Law, and participated personally. The employer participated by Deb Berg, Director of Human Resources, and Bob Hebl, Executive Director. The claimant offered and Exhibit A was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from April 29, 2010, to March 1, 2012. She suffered an injury on November 15, 2011. Her physician restricted her from working from November 16 through December 6, 2011, and from February 3 through 8, 2012. At all other times she was released to return to work with or without restrictions. The employer separated the claimant from employment on March 1, 2012. The claimant filed for unemployment insurance benefits with an effective date of March 18, 2012.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is able to work.

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant was released to return to work with restrictions by his physician. She is considered to be available for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

The issue of the separation from employment is remanded for determination.

DECISION:

The representative's April 26, 2012 decision (reference 02) is reversed. The claimant is disqualified from receiving unemployment insurance benefits because she is able and available for work with the employer. The issue of the separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs