

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERYL A COOPER
Claimant

APPEAL NO. 14A-UI-01452-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
DOLLAR GENERAL
Employer

OC: 12/29/13
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 4, 2014, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on March 3, 2014. Claimant participated personally. Employer responded to the hearing notice and did not participate as the representative did not answer when called. Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work. The issue in this matter is whether claimant quit for good cause attributable to employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant went off work due to a work-related injury on March 13, 2013. Claimant has not recovered to the point she can do her old job. Claimant has work restrictions. Claimant has asked for light duty work. Employer refused to re-employ claimant. Claimant is still an employee on sick leave with this employer. The employment relationship has not been severed. Claimant cannot perform work required in her job as a manager due to the need for surgery and further treatment.

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 24.22(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.

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.

Inasmuch as the injury was work related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Claimant is still in need of ongoing treatment. Benefits are withheld until such time as the claimant obtains a medical release to return to work. Benefits shall be withheld effective December 29, 2013.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

Claimant is still employed and as such there is no issue of employment separation.

DECISION:

The decision of the representative dated February 4, 2014, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective December 29, 2013, because she is not able and available for work. The issue of employment separation is moot.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs