

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIENNE M GOODRICH**  
Claimant

**APPEAL NO. 14A-UI-09355-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/01/14**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the September 5, 2014, reference 03, decision that denied benefits effective August 24, 2014, based on an Agency conclusion that she did not meet the availability requirement. After due notice was issued, a hearing was held on September 30, 2014. Claimant participated. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-09356-JTT. Department Exhibits D-1, D-2 and D-3 were received into evidence.

**ISSUE:**

Whether the claimant has been able to work and available for work since August 24, 2014.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a claim for benefits that was effective June 1, 2014. The claimant received \$408.00 in weekly benefits for each of the weeks between June 29, 2014 and August 30, 2014. The claimant's base period consists of the four quarters of 2013, during which the sole base period employer was Von Maur, Inc. The claimant's employment with Von Maur has started as full time and continued to be full time until May 2013. The claimant had suffered a workplace injury in 2011. As of May 2013, the claimant was experiencing migraine headaches, migraine-associated pain, nausea, sensitivity to light, and dizziness. The claimant went on a two-month leave of absence. When the claimant returned to work July 2013, she returned with a sixteen-hour per week medical restriction. The medical restriction limited her to working no more than four hours per shift, nor more than two days in a row, and no more than four days a week. The restrictions continued largely unchanged. In August 2013, the claimant's restrictions were eased, but only to allow her to work twenty hours per week. In October or November 2013, the claimant's restriction returned to sixteen hours per week. In April 2014, the claimant's availability for work further restricted when her doctor restricted the claimant to working no more than three hour per shift and no more than twelve hours per week. The restrictions regarding the number of consecutive shifts and number of shifts per week remained unchanged.

The claimant's base period wages from the employment at Von Maur were as follows. During the first quarter of 2013 the claimant's wages totaled \$10,916.66. During the second quarter of 2013 the claimant's wages totaled \$7,500.00. During the third quarter of 2013 the claimant's wages totaled \$4,395.70. During the fourth quarter of 2013 the claimant's wages totaled \$4,563.93.

The claimant continued her claim for unemployment insurance benefits through the benefit week that ended September 6, 2014 and then discontinued the claim. The decision from which the claimant appealed addresses only her eligibility for benefits effective August 24, 2014. For the week ending August 30, 2014, the claimant made two job contacts and reported \$57.00 in wages. For the week ending September 6, 2014, the claimant made zero job contacts and reported \$60.00 in wages. The claimant started new, part-time employment on August 19, 2014 with an employer who was willing to accommodate the three-hour per shift and twelve-hour per week medical restriction. During the week that ended August 30, 2014, the claimant worked nine hours. During the week that ended September 6, 2014, the claimant worked about the same number of hours as the prior week.

The claimant continues to suffer migraine-related issues on a regular basis that impact her availability for work.

#### **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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a and (2) 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.

Iowa Admin. Code r. 871-24.23(1), (16) and (35) provide:

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.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(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.

The claimant cannot be deemed available for work within the meaning of law, given her medical condition and significant restriction on her work hours. Her base period wages include wages for full-time employment. The claimant's medical restrictions were the sole basis for the prior employment becoming part-time, with increasingly reduced hours, until the claimant was limited to working three hours per shift, twelve hours per week, no more than two days in a row and no more than four days a week. The claimant continues to suffer medical issues that impact on her ongoing availability for work. Benefits are denied August 24, 2014.

**DECISION:**

The claims deputy's September 5, 2014, reference 03, decision is affirmed. The claimant has not met the work availability requirement since August 24, 2014. Benefits are denied effective August 24, 2014.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css