

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BETH A HOLLAND**  
Claimant

**APPEAL NO. 07A-UI-02036-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHRISTIAN RETIREMENT HOMES INC**  
Employer

**OC: 01/07/07 R: 04  
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 19, 2007, reference 03, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on March 14, 2007. Claimant participated personally. Employer participated by Kathy Walker, Human Resource Director. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

**ISSUE:**

The issue in this matter is whether 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: Claimant went off work due to a non-work-related illness. Claimant has not been able to return to work to date of hearing due to the non-work-related illness.

**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, (2) 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.

(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.

Inasmuch as the illness was not work-related and the treating physician has not released the claimant to return to work full duty, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

**DECISION:**

The decision of the representative dated February 19 2007, reference 03 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective January 7, 2007, provided claimant meets all other eligibility requirements.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw