

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PARRIS L STERLING
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**APPEAL 17A-UI-10270-DG
ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/17/17
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 6, 2017, (reference 02) that held claimant not able to and available for work. After due notice, an in-person hearing was scheduled for and held on October 24, 2017 in Des Moines, Iowa. Claimant participated personally. Claimant's Exhibit A was admitted to the record.

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 was suffering from stress and anxiety during the summer months of 2017. Claimant felt very ill and she was no longer able to function at work. Claimant sought medical attention for her illness. Claimant was told by her physician that she should not work until she was able to get her blood pressure and stress under control.

Claimant was placed on a work restriction by her physician beginning on September 15, 2017. Claimant was ordered to avoid all stress and to begin taking blood pressure medication to regulate her illness. Claimant was instructed that she should not work beginning on September 17, 2017.

Claimant followed her doctor's instructions, and the medication she was placed on did lower her blood pressure to a normal safe range. Claimant was released back to work without any restrictions by her physician beginning on October 8, 2017.

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 effective October 8, 2017.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(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 medical practitioner and has not been released as being able to work.

To be able to work, "[a]n 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." *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Inasmuch as the treating physician has released the claimant to return to work, the claimant has established the ability to work beginning on October 8, 2017. Benefits shall be allowed effective October 8, 2017.

DECISION:

The decision of the representative dated October 6, 2017, (reference 02) is modified in favor of the appellant. Claimant is eligible to receive unemployment insurance benefits, effective October 8, 2017, provided claimant meets all other eligibility requirements. Claimant was not able to and available for work beginning on September 17, 2017 through October 7, 2017 and is not eligible for benefits for those dates.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn