

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GLORIA L HARRELSON
Claimant

APPEAL NO. 12A-UI-13676-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARJAN MANAGEMENT SERVICE LTD
Employer

OC: 10/21/12
Claimant: Respondent (4)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The employer filed a timely appeal from a representative's decision dated November 8, 2012, reference 01, which held claimant eligible to receive unemployment insurance benefits beginning October 21, 2012 finding the claimant was available and medically able to work. After due notice was provided, a telephone hearing was held on December 17, 2012. Claimant participated. Participating on behalf of the claimant was Mr. Dan Anderson, Attorney at Law. The employer participated by Ms. Geri Gorman, Assistant Director of Nursing. Claimant's Exhibits A, B, C, and D were received into evidence.

ISSUE:

The issue is whether the claimant is able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Gloria Harrelson began employment with the captioned employer d/b/a Northbrook Manor on June 16, 2006. Ms. Harrelson was employed as a part-time certified nursing assistant and was paid by the hour. Her immediate supervisor was Ms. Geri Gorman. Ms. Harrelson was injured in a work injury on July 5, 2011 and was under the care of one or more doctors for her work-related injuries. On or about April 2, 2012, Ms. Harrelson was released as having reached maximum medical improvement. Claimant, however, was not allowed to return to work because the permanent limitations imposed by the claimant's physician did not fully release the claimant to perform all the duties of her job description as a certified nursing assistant. The claimant, however, was verified as being able to work in the general work force at jobs that did not violate the medical limitations that had been permanently imposed. When the claimant attempted to return to work the company owner would not allow Ms. Harrelson to do so and did not provide alternative work to the claimant.

Ms. Harrelson opened a claim for unemployment insurance benefits with an effective date of October 21, 2012. At that time the claimant was seeking other employment in the general work force for positions that did not violate her doctor's limitations.

Because the claimant had not been fully released by her doctor to return to her full duties as a certified nursing assistant for Northbrook Manor, the employer believed that the claimant should not be eligible to receive unemployment insurance benefits because she was "not able to work."

Ms. Harrelson continued to seek employment with other perspective employers until December 3, 2012 when she was no longer able to work because of what the claimant described as "depression."

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that Gloria Harrelson has been able and available for work since establishing the claim for benefits that was effective October 21, 2012. The claimant was able and available for work until December 3, 2012 when she concluded that depression had prevented her from being able to accept employment.

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".

An otherwise eligible claimant is eligible to receive benefits with respect to any week only if the evidence indicates the claimant is able to work, is available for work and is earnestly and actively seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22.

To satisfy the ableness requirement of the law, 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. 871 IAC 24.22(1). With regard to illness, each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. 871 IAC 24.22(1)(a). A statement from a medical practitioner is considered to be prima facie evidence of the physical ability of the individual to perform the work required, that is, the statement is legally sufficient to establish the claimant's physical ability unless disproved by other evidence. 871 IAC 24.22(1)(a).

871 IAC 24.22(2) provides as follows:

To satisfy the availability requirement an individual must be willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual must be generally attached to the labor market. Since other 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 the market for the type of service which the individual offers in the geographic area in which the individual offers the service. Market in that sense does not mean that the 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 the individual is offering is generally performed in the geographic area of which the individual is offering the services.

Based upon the evidence in the record and the application of the appropriate law, the administrative law judge concludes that Gloria Harrelson has been able and available for employment since establishing her claim for benefits and, therefore, is eligible for benefits until December 3, 2012 when the claimant, by her own testimony, has established that she is no longer able to work due to "depression."

DECISION:

The agency representative's decision dated November 8, 2012, reference 01, is affirmed as modified. The claimant has been able and available for work since establishing her claim for benefits and has been able and available for work until December 3, 2012. Accordingly, the claimant is ineligible for benefits effective December 3, 2012 and until she establishes that she is able and available for work.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs