

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SPERASIA MUKESHIMANA
Claimant

APPEAL 17A-UI-12237-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GLS JANITORIAL SERVICES INC
Employer

**OC: 12/18/16
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available
Iowa Admin. Code r. 871-24.22(1) - Able to Work – illness or injury

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 21, 2017, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 18, 2017. The claimant participated personally and through a Kinyarwanda interpreter from CTS Language Link. The employer participated through Allen Arp, president. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO CLAIMANT: You may find additional information about food, housing, and other resources by dialing 211 or at <http://65.166.193.134/IFTWSQL4prod/iowa/public.aspx>.

ISSUE:

Is the claimant able to work and available for work effective October 22, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant has been employed full-time as a cleaner and last performed work on October 24, 2017. At that time, she notified the employer that her doctor had advised her to stop working until she followed up with a specialist. The claimant has a history of injuries and illness, both personal and work related. Most recently, she has been under doctor's care for a stomach infection and possible carpal tunnel complications. She has not been released to return to work with or without restrictions, but expects to be healed in February 2018. The claimant has not separated from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is not able and available for work effective October 22, 2017. Benefits are denied.

Iowa Code § 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. 871-24.23(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.

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. *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 723 (Iowa 1993). 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.

The question of work relatedness has no relevance to the question of availability. The limitation of the ability to work is the same for work related or non- work related conditions. In this case, the claimant has been advised by her treating physicians that she is unable to perform any work, with or without restriction. The administrative law judge is sympathetic to the claimant and recognizes the financial strain her family is experiencing, but based on the evidence presented, concludes the claimant is not able and available to perform work at this time due to her medical conditions, and therefore does not meet the requirements to be eligible for unemployment insurance benefits.

DECISION:

The November 21, 2017, (reference 02) decision is affirmed. The claimant is not able to work and available for work effective October 22, 2017. Benefits are withheld until such time as she obtains a medical release to return to some type of work for which she is qualified given her education, training, and work history.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn