

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KRYSTAL D PRUETT**  
Claimant

**COUNCIL BLUFFS PAYROLL COMPANY**  
Employer

**APPEAL 17A-UI-03136-JP-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 01/15/17**  
**Claimant: Respondent (4)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Code § 96.19(38)a & b – Total and Partial Unemployment  
Iowa Code § 96.7(2)a – Same Base Period Employment

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 9, 2017, (reference 04) unemployment insurance decision that allowed benefits beginning February 12, 2017. The parties were properly notified about the hearing. A telephone hearing was held on April 13, 2017. Claimant did not participate. Employer participated through hearing representative Thomas Kuiper and human resources specialist Kenya Phillips. Official notice was taken of the administrative record, including claimant's wage history and benefit payment history, with no objection.

**ISSUES:**

Is the claimant able to work and available for work?

Is the claimant eligible to receive partial benefits?

Is the employer's account subject to charge?

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired to work full-time as a general laborer on August 1, 2016. Claimant is still currently employed with the employer. During her employment with the employer, claimant has averaged 40 hours per week. Claimant's typical schedule is 5:00 a.m. to 3:00 p.m., but it fluctuates based on production. Claimant's start and end time can fluctuate based off of production and her hours per week can also fluctuate.

The employer's work week is Monday through Sunday. If an employee is going to be off work for medical reasons, they are required to provide a doctor's note to health services. Health services then notifies human resources of the length of time the employee is going to be off work and whether it is work related (e.g., work related injury). Claimant provided health services a note placing her off work from February 9, 2017 to February 23, 2017. Claimant's absence was non-work related. Claimant did not work from February 9, 2017 to February 23, 2017. Ms. Phillips testified the employer had hours available for her during the weeks beginning

February 12, 2017 and February 19, 2017. Claimant returned to work on Thursday, February 23, 2017 and she worked 13.32 hours that week.

The week of February 27, 2017, claimant worked 43.75 hours week. The week of March 6, 2017, claimant worked 30.02 hours, which were the only the employer had available for her. The week of March 13, 2017, claimant worked 5.12 hours, which were the only the employer had available for her. The week of March 20, 2017, claimant worked 37.59, which were the only the employer had available for her. The week of March 27, 2017, claimant worked 44.43 hours. The week of April 3, 2017, claimant worked 22.1 hours, which were the only the employer had available for her.

The administrative record reflects claimant has only filed a weekly continued claim for benefits for the weeks ending January 21, 2017 and February 18, 2017.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that claimant was not able to work and available for work for the two weeks ending February 25, 2017.

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 Code § 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time,

if the individual's employment, although temporarily suspended, has not been terminated.

Iowa Code § 96.7(2)a(2)(a), (b), and (c) provides:

2. Contribution rates based on benefit experience.

a. (2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

(b) An employer's account shall not be charged with benefits paid to an individual who left the work of the employer voluntarily without good cause attributable to the employer or to an individual who was discharged for misconduct in connection with the individual's employment, or to an individual who failed without good cause, either to apply for available, suitable work or to accept suitable work with that employer, but shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

(c) The amount of benefits paid to an individual, which is solely due to wage credits considered to be in an individual's base period due to the exclusion and substitution of calendar quarters from the individual's base period under section 96.23, shall be charged against the account of the employer responsible for paying the workers' compensation benefits for temporary total disability or during a healing period under section 85.33, section 85.34, subsection 1, or section 85A.17, or responsible for paying indemnity insurance benefits.

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. Employment Appeal Board*, 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant provided the employer a note placing her off work from February 9, 2017 to February 23, 2017 for a non-work related medical condition. The employer is not obligated to accommodate a non-work related medical condition. Inasmuch as claimant's medical condition was not work-related and she was not released to return to work with or without restriction until February 23, 2017, she has not established her ability to work while still an employee of the employer effective for the two weeks ending February 25, 2017. Benefits are denied for the two weeks ending February 25, 2017.

**DECISION:**

The March 9, 2017, (reference 04) unemployment insurance decision is modified in favor of the appellant. Claimant was not able to work and available for work from February 9, 2017 through February 25, 2017. Benefits are denied for the two weeks ending February 25, 2017.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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