

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTINA A ZUMWALT
Claimant

APPEAL 21A-UI-00114-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANAM CARA CORPORATION
Employer

OC: 04/19/20
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available – Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Claimant filed an appeal from the November 23, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on February 3, 2021 at 10:00 a.m. Claimant participated. Employer did not participate. No exhibits were admitted.

ISSUE:

Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment as a part-time caregiver with Anam Cara Corporation in late January 2020. On April 10, 2020, claimant broke her arm at home. During the third week of April 2020, claimant agreed to do a companionship assignment for employer. The assignment would not require claimant to perform caregiver tasks; claimant could not serve as a caretaker due to her arm injury. When claimant reported to the client's home, the client asked her to perform many caregiver tasks outside of the scope of companionship. Claimant performed the tasks. Claimant did not inform employer that the assignment required more than companionship.

On May 1, 2020, claimant's physician advised claimant not to work. On May 7, 2020, claimant had surgery on her arm. After the surgery, claimant was required to complete two to three months of physical therapy. Claimant got upset with her physician and has not returned. Claimant has not been released by a physician to return to work.

Claimant believes that she is physically able to perform her job duties. Claimant has not returned to employer and offered her services, because she is upset that her last assignment with employer was represented as a companionship assignment but required her to perform caregiving tasks. Claimant began working for a new employer on August 11, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

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), (2) provide, in pertinent part:

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.

Iowa Admin. Code r. 871-24.23(6), (34), (35) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

(34) Where the claimant is not able to work due to personal injury.

(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 claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

Claimant broke her arm, which made her unable to perform her job duties as a caregiver. Claimant's physician advised her not to work. Claimant has not be released by a physician to return to work. Claimant has not met her burden of proving she is able to and available for work. Accordingly, claimant is not eligible for unemployment insurance benefits.

DECISION:

The November 23, 2020 (reference 01) unemployment insurance decision is affirmed. Claimant is not able to and available for work. Benefits are denied.



Adrienne C. Williamson
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February 19, 2021
Decision Dated and Mailed

acw/mh