

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY CLEMENT
Claimant

APPEAL NO: 15A-UI-06804-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PEOPLES MEMORIAL HOSPITAL BUCHAN
Employer

OC: 05/17/15
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 2, 2015, reference 02, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 21, 2015. The claimant participated in the hearing. Shelby Medina, Chief Administrative Officer, participated in the hearing on behalf of the employer. Claimant's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time staff RN for the long-term care unit for People's Memorial Hospital from October 14, 2013 to May 14, 2015. She was separated from employment with this employer May 14, 2015, after her FMLA was denied and she was not ready to return to work after the employer gave her a leave of absence, it expired, and the claimant was not released to return to work yet.

The claimant had a doctor's excuse May 8, 2015, excusing her from work through June 7, 2015 (Claimant's Exhibit A). She received another doctor's note June 10, 2015, stating she may return to work light duty but did not specify any restrictions (Claimant's Exhibit B). The claimant testified she could perform any job that did not require her to stand for her entire shift because she is experiencing hip pain.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able and available for work.

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. 871-24.22(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.

While the claimant was taken off work by her physician from May 8 through June 9, 2015, she was released for "light duty work" effective June 10, 2015. The claimant explained that her physician simply meant she could not perform her job as a staff RN in the Long Term Care Unit but that she could work for her former employer as she could tolerate it. Because the claimant has separated from her employment with the hospital and is seeking other types of work that do not require her to stand during her entire shift, she is considered able and available for work effective the week ending June 20, 2015, as she was unavailable for work the majority of the week ending June 13, 2015. Accordingly, benefits are allowed effective the week ending June 20, 2015.

DECISION:

The June 2, 2015, reference 02, decision is reversed. The claimant is able and available for work effective the week ending June 20, 2015. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs