

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MARVA SEEDERS**

Claimant

**APPEAL 19A-UI-00441-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**

Employer

**OC: 12/16/18**

**Claimant: Appellant (1)**

Iowa Code §96.4(3) – Able to and Available for Work

Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy

Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 10, 2019, (reference 01) unemployment insurance decision that denied benefits based upon a determination that she was unable to work. The parties were properly notified about the hearing. A telephone hearing was held on January 31, 2019. Claimant participated and testified. Employer elected not to participate. Claimant's Exhibit A was received into evidence.

**ISSUE:**

Is claimant able to and available for work effective December 16, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is currently employed as a full-time kitchen worker for this employer. Claimant has been on FMLA leave since November 19, 2018 after she suffered a non-work related foot injury. Claimant was released to return to work two weeks after her injury, but with the restriction that she remain seated, with her foot slightly elevated, all day. Claimant relayed these restrictions to the employer, but was told they did not have work to accommodate her. Claimant has not yet been released to return to work without restriction.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective December 16, 2018.

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)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 was released to return to work with restrictions approximately two weeks after her non-work related injury. The employer is not able to accommodate her restrictions. The employer is not obligated to accommodate a non-work related medical condition. Inasmuch as the medical condition is not work-related and the treating physician has not released the claimant to return to work without restriction, she is not considered able to or available for work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

**DECISION:**

The January 10, 2019, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective December 16, 2018. Benefits are withheld until such time as the claimant obtains a full medical release to return to work, offers her services to the employer, and no suitable, comparable work is available considering reasonable accommodation; or if she is involuntarily separated before that time.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs