

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTINE LARSON
Claimant

HELPING HANDS NURSING SOLUTIONS
Employer

APPEAL 21R-UI-18348-SN-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 12/27/20
Claimant: Appellant (2)

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:

On March 13, 2021, the claimant, Christine Larson, filed an appeal from the March 10, 2021, reference 04, unemployment insurance decision that denied benefits based upon the conclusion she was not able to and available for work for the December 27, 2020.

After due notice was issued, a telephone conference hearing was scheduled to be held on May 24, 2021, at 2:00 p.m. The claimant did not participate. This administrative law judge issued a default decision, 21A-UI-07533-SN-T. The administrative law judge subsequently amended that decision due to inadvertently placing the wrong employer's name on the original decision.

The claimant appealed 21A-UI-07533-SN-T. The Employment Appeal Board accepted her appeal and remanded the case back to this administrative law judge because she credibly testified she had never received a notice of hearing.

ISSUE:

Was the claimant able to work and available for work for the week ending December 27, 2020?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant started working for the employer on August 23, 2018. The last day the claimant worked on the job was on October 19, 2019.

On October 20, 2019, the claimant was in a head-on collision with a semi-truck. The claimant informed the employer of the accident on October 24, 2020. She had several hand surgeries after this accident.

On January 21, 2020, the claimant began work with Associated Milk Producers. The claimant worked in this position until December 6, 2020. On December 6, 2020, the claimant was in another car accident. The claimant was released to return to work on December 28, 2020.

On December 31, 2020, the claimant returned to work at Associated Milk Producers. The claimant worked until January 6, 2021, when she was terminated. The claimant has been looking for work after she was terminated.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work effective December 27, 2020. Benefits are granted, provided she is otherwise eligible.

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. 871-24.22(2) provides:

Benefit 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.

(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 provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

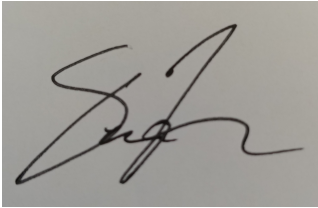
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

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.

The claimant was released to return to work without restriction on December 28, 2020. A release to return to work is prima facie evidence of the claimant's ability to work. Iowa Admin. Code r. 871-24.22(1)a. The claimant also worked for a subsequent employer before she was terminated by that employer. The claimant was able to work effective December 27, 2020. Benefits are granted, provided she is otherwise eligible.

DECISION:

The March 10, 2021, reference 04, unemployment insurance decision is reversed. The claimant was able to work and available for work effective December 27, 2020. Benefits are granted, provided she is otherwise eligible.

A rectangular box containing a handwritten signature in black ink. The signature is stylized and appears to read 'S. Nelson'.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

October 22, 2021
Decision Dated and Mailed

smn/kmj