

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA L LINN**  
Claimant

**APPEAL NO. 14A-UI-08480-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAREWAY STORES INC**  
Employer

**OC: 07/20/14**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Linda Linn filed a timely appeal from the August 13, 2014, reference 01, decision that denied benefits effective July 20, 2014, based on an agency conclusion that she was not able to perform work due to injury. After due notice was issued, a hearing was held on September 4, 2014 and concluded on September 10, 2014. Ms. Linn participated. Theresa McLaughlin represented the employer and presented additional testimony through Will Goldberg. Exhibits One through Seven were received into evidence.

**ISSUES:**

Whether Ms. Linn met the work ability and availability requirements during the period of July 20, 2014 through the benefit week that ended August 16, 2014, when she discontinued her claim.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Linda Linn is employed by Fareway Stores as a full-time cashier/stocker/grocery clerk in Des Moines. Ms. Linn began the employment in April 2013. In May 2014, Ms. Linn commenced an approved leave of absence so that she could undergo surgery for non-work-related bilateral carpal tunnel syndrome. Before Ms. Linn went off work, she last worked on May 29, 2014. On May 30, 2014, Ms. Linn underwent surgery on her left wrist. Ms. Linn is right-handed.

On June 19, 2014, Ms. Linn's surgeon provided a written statement as part of Ms. Linn's application for short-term disability benefits through the employer's third-party provider, Principal Financial Group. Ms. Linn's surgeon set forth that Ms. Linn had undergone surgery on May 30, 2014 on her left hand for carpal tunnel release. The surgeon set forth that Ms. Linn was restricted to lifting, carrying, pushing and/or pulling no more than two pounds. Ms. Linn's regular duties required that she be able to push, pull, carry and lift in excess of two pounds. The employer did not have work that Ms. Linn could safely perform with her medical restrictions.

On June 20, 2014, Ms. Linn's surgeon completed FMLA certification documentation that indicated Ms. Linn was unable to perform her job functions due to her medical condition. The doctor set forth that Ms. Linn was restricted to pushing, pulling and/or lifting no more than two pounds. The doctor set forth that Ms. Linn needed to be off work beginning May 30, 2014 and would need to remain off work until a date yet to be determined as of June 20, 2014. Ms. Linn's surgeon provided the FMLA certification materials to the employer via fax on June 20, 2014.

On July 22, 2014, Ms. Linn's surgeon provided a written medical update that indicated Ms. Linn had undergone surgery on her right hand on July 11, 2014 and that she was subject to a two-pound restriction on the right hand until August 19, 2014. The employer received the update on July 24 2014.

On August 12, 2014, Ms. Linn's surgeon provided a written medical update that indicated Ms. Linn could return to work without restrictions on August 19, 2014. The employer received the update on August 13, 2014. Ms. Linn returned to her regular duties on August 19, 2014 and continued in those duties at the time of the appeal hearing.

Ms. Linn established a claim for unemployment insurance benefits that was effective July 20, 2014 and continued the claim through the benefit week that ended August 16, 2014. Though Ms. Linn was still attached to the employment at Fareway, she made at least two job contacts with other prospective employers during each of the four weeks when her claim was active.

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

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a and (2) provide:

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(1) and (35) provide:

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.

Despite Ms. Linn's assertions that she was able and available for work, the weight of the evidence indicates that she was not in fact able and available for work within the meaning of the law during the period of July 20, 2014 through the benefit week that ended August 16, 2014. During that entire time, Ms. Linn was under the care of a surgeon and was dealing with a serious medical issue in both hands. During the entire time, Ms. Linn's surgeon restricted her from perform any work that might involve lifting, carrying, pushing or pulling more than two pounds. Ms. Linn suggested during that hearing that the employer's customers, among others, could have accommodated her medical restrictions to make it possible for Ms. Linn to perform her cashiering duties. That expectation was unreasonable. The employer reasonably expected and communicated to Ms. Linn that she could not return to work with the two-pound lifting restriction. The employer allowed Ms. Linn return to work as soon as her doctor released her to do so. Because Ms. Linn was still attached to the employment during the four weeks when her claim for unemployment insurance benefits were active, she was not required to look for additional work, and it was her ability and availability to perform her regular work duties that determined whether she was able to work and available for work within the meaning of the law. Ms. Linn was not eligible for benefits during the period of July 20, 2014 through August 16 2014.

#### **DECISION:**

The claims deputy's August 13, 2014, reference 01, decision is affirmed. The claimant was not able to work and available for work within the meaning of the law during the period of July 20, 2014 through August 16, 2014. The claimant was not eligible for benefits for that period.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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