

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTAYSIA S BROOKS

Claimant

APPEAL 17A-UI-09092-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERIT RESOURCES II INC

Employer

OC: 04/30/17

Claimant: Appellant (4)

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

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the August 24, 2017 (reference 03) unemployment insurance decision that found claimant was ineligible for unemployment benefits because she was under the care of a doctor and unable to perform work. Benefits were denied from April 30, 2017 until June 17, 2017. The parties were properly notified of the hearing. A telephone hearing was held on March 28, 2017. The claimant, Antaysia S. Brooks, participated personally. The employer, Merit Resources II Inc., did not participate. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant able to work and available for work effective April 30, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Employer is a temporary employment firm. Claimant was a temporary employee and was placed on a job assignment with Shazam as a front desk worker. Claimant began her employment on September 29, 2016. Claimant's last day physically worked on her job placement with Shazam was April 6, 2017.

On April 7, 2017 claimant suffered from a medical condition that led to her being admitted to the hospital. Claimant remained in the hospital from Friday, April 7, 2017 until Tuesday, April 11, 2017. Claimant was unable to work after being discharged from the hospital.

Claimant returned to the hospital on or about Saturday, April 22, 2017 and was discharged from that hospital stay on or about Monday, April 24, 2017. Following her discharge from the hospital on Monday, April 24, 2017, claimant was advised to visit with her primary physician.

Claimant was unable to work from April 24, 2017 until May 8, 2017, when she visited with her primary physician. Her symptoms during this period included feeling off balance and having to have her mother assist her with tasks.

On May 8, 2017, after visiting with her primary physician, claimant was given work restrictions from lifting more than ten pounds at a time as well as a restriction to work no more than 30-40

hours per week. Claimant spoke to her employer after receiving her restrictions on May 8, 2017 and was told that there were no further positions available for her.

As of June 29, 2017, claimant's physician revised her restrictions and instructed that she could work up to 40 hours per week but that she could still not lift more than ten pounds. Claimant contacted the employer and was immediately placed on a job assignment with Orchard Place beginning the week of June 26, 2017. Her job assignment with Orchard Place ended on Tuesday, September 19, 2017.

From April 30, 2017 through June 17, 2017, claimant was actively and earnestly seeking work by making contacts with employers each week. Claimant had been previously employed full-time with Wells Fargo Bank N.A. as a mortgage servicing specialist.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to work from April 30, 2017 through May 6, 2017 due to her medical illness. Claimant was able to and available for work beginning May 7, 2017 through June 17, 2017.

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 § 96.19, subsection 38, paragraph "b", subparagraph 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".

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)).

Because the treating physician had released the claimant to return to work the benefit week beginning May 7, 2017, she has established her ability to work from May 7, 2017 through June 17, 2017. The working restrictions finding claimant unable to lift more than ten pounds and that she must work between 30-40 hours per week did not make her unable or unavailable to work for the purposes of unemployment insurance benefits during that period. Claimant was able to work, available for work, and was earnestly and actively seeking work from May 7, 2017 through June 17, 2017.

DECISION:

The August 24, 2017 (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work effective April 30, 2017 to May 6, 2017. Claimant was able to and available for work effective May 7, 2017 through June 17, 2017. Benefits are allowed effective May 7, 2017, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs