

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANIE L WOODSIDE
Claimant

APPEAL 18R-UI-11518-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHNEIDER NATIONAL CARRIERS INC
Employer

**OC: 09/23/18
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 15, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that she is unable to work. The parties were properly notified about the hearing. A telephone hearing was held on December 13, 2018. Claimant participated and testified. Employer participated through Area Service Manager Troy Greene.

ISSUE:

Is the claimant able to work and available for work effective September 23, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant last worked for the employer as a full-time driver. On September 14, 2018 claimant suffered a stroke and was placed on leave by the employer under the Family Medical Leave Act (FMLA). Claimant was released to return to work without restriction from her doctor, but in accordance with Department of Transportation guidelines, she is unable to drive commercially for five years. Claimant has not yet been separated from employment, but cannot return to her prior position as a commercial driver for at least five years. There are currently no other positions available for claimant at or near the location where she was working. Claimant's medical condition was not caused by her employment.

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 September 23, 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 has been released to return to work by her doctor, but is not able to drive commercially under DOT regulations for five years. As such, claimant cannot return to her prior position with the employer, but has not yet separated from employment. The employer is not obligated to accommodate a non-work related medical condition. Benefits are withheld until such time as the claimant obtains a full release to return to work or is separated from employment. At that time, her ability to work will not be measured by the job she held most recently, but by standards of her education, training, and work history.

DECISION:

The October 15, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective September 23, 2018. Benefits are withheld until such time as the claimant is able to return to employment with the employer, 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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs