

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEA M SORENSON
Claimant

APPEAL NO: 14A-UI-01045-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEBSTER CO METRO LAW ENFORCEMENT
Employer

OC: 01/05/14

Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Dea M. Sorenson (claimant) appealed a representative's January 28, 2014 decision (reference 02) that concluded she was not qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2014. The claimant participated in the hearing. Jamie Anderson appeared on behalf of Webster County Metro Law Enforcement (employer), and presented testimony from one other witness, Heidi Smith. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was and is the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on May 1, 2007. She worked full time as an overnight dispatcher in the employer's law enforcement telecommunications center. Her last day of work was the shift on the evening of September 21 into the morning of September 22.

Since May of 2011 the claimant had suffered several seizures. In part because of a concern about the possibility that the claimant might have a seizure while on duty, since June 2012 there had been another dispatcher on duty at the same time the claimant was working her shift. After September 21 the claimant suffered a serious seizure and went on a medical leave of absence. She continued to suffer one or two seizures per week. Her doctor has indicated that some of the seizures are epileptic, and others are not.

The employer had a meeting with the claimant on January 7, 2014 to discuss her status as being able to return to work. The claimant's doctor had not advised that she could not or should not work, but as the claimant was still suffering periodic seizures, while she was willing to attempt to return to work, the employer was unwilling to allow the claimant to return to work, even if there was another dispatcher on duty, as the employer felt there was still too much risk.

The employer indicated that if the claimant tendered her resignation, it would not contest her eligibility for unemployment insurance benefits. As a result, the claimant did tender her resignation.

The claimant has been seeking other employment which she believes she would be able to perform despite her medical issues.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found 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); 871 IAC 24.22(1).

Even if she is not able to perform her prior job as a dispatcher for the employer, the claimant has demonstrated that she is able to work in some gainful employment with some employer. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's January 28, 2014 decision (reference 02) is reversed. The claimant is able to work and available for work effective January 5, 2014. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs