

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HEATHER M KENNEDY
Claimant

MENARD INC
Employer

APPEAL 16A-UI-11994-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/16/16
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the November 3, 2016, (reference 03) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 22, 2016. Claimant participated. Employer did not participate.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began to have pain in her feet and then all the way from her neck to her feet. She sought treatment from a podiatrist who provided work restrictions that included a sit-down only job. When she was hired at Menards the claimant was expected to be able to stand and walk around to perform her job duties. On October 16, 2016, she presented her doctor's note to the employer and was told that the employer would not accommodate her need for a sit down job, but that they would hold her job for her until she could recover. The claimant still has not had her sitting restriction lifted and is being seen in Iowa City for additional diagnostic evaluation. The claimant has not had a work related injury or illness.

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 October 16, 2016.

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 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 physician and has not been released as being able to work.

Inasmuch as the medical condition was not work-related and the treating physician has not released the claimant to return to work with or without restriction, the claimant has not established her ability to work. Employer is not obligated to accommodate a non-work related medical condition, thus until claimant is released to perform her full work duties, she is not considered able to or available for work.

DECISION:

The representative's decision dated November 3, 2016, (reference 03) is affirmed. The claimant is not able to work and available for work effective October 16, 2016. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs