

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENDA J HASTINGS
Claimant

A & M SERVICES INC
Employer

APPEAL 17A-UI-13272-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/01/17
Claimant: Respondent (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The employer filed an appeal from the December 15, 2017, (reference 09) unemployment insurance decision that allowed benefits beginning March 26, 2017. The parties were properly notified about the hearing. A telephone hearing was held on January 19, 2018. Claimant did not register for the hearing and did not participate. Employer participated through general manager Ryan Kasperbauer. Official notice was taken of the administrative record with no objection.

ISSUE:

Is the claimant able to work and available for work effective March 26, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant suffered a non-work related injury (broken right wrist) in November 2016 and she had to stop working for the employer. Claimant brought the employer a doctor's note in November 2016 that she was unable to work until she was reevaluated. On January 31, 2017, claimant suffered another non-work related injury (broken left wrist). Claimant had a follow-up appointment on February 14, 2017. When claimant broke her left wrist, she had not yet been cleared to return to work. The last doctor's note the employer received was January 31, 2017. The administrative record reflects that on March 21, 2017, claimant was released to return to work with no restrictions on March 28, 2017. In early April 2017, claimant returned to the employer, but the employer did not have a position available for her because the employer had hired someone to replace her in February 2017. The employer believed claimant had abandoned her job. On April 19, 2017, the employer offered claimant her position with the same hours and pay, but she refused.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work beginning March 26, 2017.

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. 871-24.22(2) provides:

Benefit 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.

(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(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.

An individual claiming benefits has the burden of proof that they are be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. On March 21, 2017, claimant's doctor released her to return to work with no restrictions starting Tuesday, March 28, 2017. "A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required." Iowa Admin. Code r. 871-24.22(1)a. Inasmuch as claimant's medical condition was not work-related but employer filled her position before she was released to return to work; and when the treating physician had released her to return to work without restrictions, claimant has established her ability to and availability for work. Benefits are allowed effective March 26, 2017, provided claimant is otherwise eligible.

DECISION:

The December 15, 2017, (reference 09) unemployment insurance decision is affirmed. Claimant is able to work and available for work effective March 26, 2017. Benefits are allowed, provided claimant is otherwise eligible.

REMAND: The separation issue delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs