

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DONITA R ECKRICH**  
Claimant

**UNITED PARCEL SERVICE**  
Employer

**APPEAL NO. 21A-UI-15176-B2-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/21/21**  
**Claimant: Appellant (2)**

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Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 22, 2021 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on August 27, 2021. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

**ISSUES:**

Whether claimant is able and available for work?

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant worked as a full time driver for UPS until she was injured at work on September 17, 2018. After that injury, claimant was put on worker's compensation until the first quarter of 2020. After that time, employer stated that claimant could not return to driving as she could not fulfill the physical requirements. Employer did not offer claimant another, non-driving position.

Claimant stated that she had surgery on her foot last fall and although she has surgery pains still and can't stand for full days, she does stand for 5 hour periods bartending at least a couple of days a week. Claimant is willing to do other work off of her feet, but does not have much experience.

**REASONING AND CONCLUSIONS OF LAW:**

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.

Inasmuch as the injury was work-related and the claimant has shown the ability to work in some capacity, she has established the ability to work. Benefits shall be allowed effective March 21, 2021.

**DECISION:**

The decision of the representative dated June 22, 2021, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective March 21, 2021, provided claimant meets all other eligibility requirements.



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Blair A. Bennett  
Administrative Law Judge

September 02, 2021  
Decision Dated and Mailed

bab/ol