

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA CANCINO
Claimant

APPEAL NO. 07A-UI-06195-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/10/07 R: 01
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Maria Cancino (claimant) appealed an unemployment insurance decision dated June 14, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was not able to perform work as of June 10, 2007. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 9, 2007. The claimant participated in the hearing. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed with Curly's Foods and seeking treatment for depression. Her therapist and her physician took her off work as of March 2007. While she was off work, the claimant was involved in a motor vehicle accident on April 20, 2007 and her chiropractor took her off work through June 5, 2007 due to non-work-related injuries. Although her chiropractor released her to return to work, her physician and therapist have not provided a work release.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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".

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She had been taken off work by her therapist and physician in March 2007 and has not provided a work release from those health care providers. While she was subsequently in a motor vehicle accident and taken off work by her chiropractor, her release from that chiropractor does not establish her ability to work since she was not able to work prior to that accident. The claimant has failed to meet her burden and benefits are denied.

DECISION:

The unemployment insurance decision dated June 14, 2007, reference 01, is affirmed. The claimant does not meet the availability requirements of the law and benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css