

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MONICA E MILLER
Claimant

APPEAL NO. 10A-UI-05742-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**EVANGELICAL FREE CHURCH HOME
– BOONE IOWA**
Employer

**Original Claim: 09/20/09
Claimant: Appellant (2)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Monica E. Miller (claimant) appealed a representative's April 8, 2010 (reference 03) decision (which amended a representative's decision issued on March 24, 2010 (reference 02)) that concluded the claimant was not qualified to receive unemployment insurance benefits as not being able and available for work after a separation from employment from Evangelical Free Church Home, Boone, Iowa (employer). This appeal was consolidated for hearing with one related appeal (on the reference 02 decision), 10A-UI-04773-DT. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 29, 2010. The claimant participated in the hearing, was represented by Phillip Miller, attorney at law, and presented testimony from one witness, Scott Mailey. Nancy Sloan appeared on the employer's behalf. During the hearing, Claimant's Exhibit A was entered into evidence. 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 the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The parties to this proceeding were also parties to a prior proceeding in which the Employment Appeal Board issued a decision on January 28, 2010, in 10B-UI-15970. That decision was not further appealed, and findings of fact and law as set out in that determination have become final and are binding in this subsequent proceeding. The claimant had worked for the employer, a long-term care nursing facility, from October 5, 2000; her last day of partial work for the employer was August 11, 2009. (Board decision at p. 1.) A separation occurred on November 23, 2009. (Board decision at p. 2.)

Specifically, one of the Board's findings of fact was that while the claimant had some prior restrictions, the most recent additional restrictions were "five pounds lifting and no repetitive pushing, pulling, gripping, and pinching." (Board decision at p. 2.) One of the conclusions of law was that the claimant's separation from employment was not disqualifying. (Board decision at p. 7.) The Board also determined as a conclusion of law that due to the fact that "she was waiting to be recalled by the Employer, and was essentially on a voluntary leave of absence until the separation took place . . . The Claimant was not able and available for work from her original claim date through November 23, 2009." (Board decision at p. 8.)

The Board remanded the issue of "whether or not the Claimant is able and available for work for any week in which she claimed for periods following November 23, 2009 . . ." (Board decision at p. 9). The representative's decisions on March 25 and April 8 were pursuant to that remand, and this appeal then followed from those decisions.

After the November 23, 2009 separation, the claimant was not seen again until February 2010. Her restrictions remained the same as those previously identified, both prior to and after the February 2010 doctor's visit. The claimant did begin making job applications beginning on November 23, 2009, and has been making at least two job applications each week. She has made application for a variety of positions, including dispatching, cashiering, clerical, reception, copying, sandwich making, and others. She is seeking full time work.

Mr. Mailey is a specialist in the area of disability management. From April 23 through April 27 he interviewed the claimant and performed an analysis of her physical abilities and restrictions as well as job market availability. He determined that given the claimant's background, abilities, and restrictions, there were positions available in the workforce which the claimant was capable of performing on a full-time basis, including some of the positions the claimant had identified as seeking. He further opined that since the claimant's restrictions had not changed since August 2009, she would have had the same abilities and availability for the weeks after November 23 for which she filed weekly claims for unemployment insurance benefits.

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). While the claimant may not be able to perform the same duties as she had been required to perform in her employment with the employer, she has demonstrated that since November 23, 2009 she is able to work in some gainful employment and that she has been making a active search for such work. Benefits are allowed as of the benefit week ending November 28, 2009, if the claimant is otherwise eligible.

DECISION:

The representative's April 8, 2010 decision (reference 03) (modifying the March 25, 2010 decision (reference 02)) is reversed. The claimant is able to work and available for work effective the benefit week ending November 28, 2009. The claimant is qualified to receive unemployment insurance benefits as of that date, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw