

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SOPHIE D VINCENT**  
Claimant

**GREAT RIVER MEDICAL CENTER**  
Employer

**APPEAL 16A-UI-13172-LJ-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/13/16**  
**Claimant: Respondent (4-R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 30, 2016, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was able to work and available for work. The parties were properly notified of the hearing. A telephone hearing was held on January 4, 2017. The claimant, Sophie D. Vincent, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Great River Medical Center, participated through Laura Bailey, human resources generalist. The administrative law judge took official notice of the fact-finding documents, the administrative record, and the record of claimant's unemployment insurance benefits payments.

**ISSUE:**

Is the claimant able to work and available for work effective November 13, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time, most recently as a registered nurse, from March 30, 2015, until November 11, 2016, when she was discharged. On November 9, 2016, claimant brought in a doctor's note stating she was unable to work and had a follow-up appointment scheduled for November 19. Bailey testified that claimant's work restriction was related to a non-work-related medical issue. Claimant had exhausted all of her available leave under the employment contract and FMLA.

Subsequently, the employer reviewed claimant's discharge and reinstated her to her position. Bailey believes this occurred during the last week in November. At that time, claimant was still not able to work. She supplied a second doctor's note stating she was unable to work until December 5, 2016. Claimant ultimately returned to work on December 8, 2016, and Bailey testified that claimant has worked a full-time schedule since that day. Claimant filed a weekly claim for benefits for the week ending December 10, 2016. She did not report that she received any wages for work that week.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to work from the week ending November 19, 2016, through the week ending December 3, 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 medical practitioner and has not been released as being able to work.

To be 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); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of

determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Here, claimant was unable to work per a note from her doctor beginning November 9, 2016. Her employer was not obligated to accommodate her non-work-related medical condition. She was released to return to work by her doctor as of December 5, 2016. At that point, claimant established her ability to work. Claimant resumed employment later that week, further demonstrating her ability to work.

**DECISION:**

The November 30, 2016, (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant was unable to work during the weeks ending November 19, November 26, and December 3, 2016; she was not eligible for benefits for those weeks. Claimant was able to work and available for work during the week ending December 10, 2016. Benefits are allowed, provided she is otherwise eligible.

**REMAND:**

The administrative record shows the claimant did not report any wages for the week ending December 10, 2016, when calling in her weekly claim for benefits. However, Bailey testified that claimant resumed working that week and received wages. This discrepancy is remanded to Investigation & Recovery for an investigation and determination.

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Elizabeth A. Johnson  
Administrative Law Judge

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Decision Dated and Mailed

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