

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**BRANDI A STONE**  
Claimant

**WHIRLPOOL CORPORATION**  
Employer

**APPEAL NO. 16A-UI-10548-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/24/16**  
**Claimant: Appellant (1)**

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 23, 2016 reference 04, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 11, 2016. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

**ISSUE:**

The issue in this matter is 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 has endured a great number of struggles in her life since June of this year. Claimant has been through the loss of her job, relatives dying, her parents in a motorcycle accident, divorce, taking care of her children, and a mental breakdown. Claimant stated that she stopped working for employer in June of 2016. Since that time, claimant went to her doctor in July, 2016 and her doctor gave her a written excuse that she was not in a mental position to go to work. Claimant has not received a release from her doctor to return to work.

Claimant takes care of her large father on a daily basis. Her father is not able to move without claimant's assistance, and claimant's mother is not strong enough to assist her husband to get around. Claimant's father had surgery on his hip last week, and is presently recuperating.

Claimant wishes to be able to return to some part-time job where she can still provide for her family needs and also earn some income. Claimant did not state hours she'd be able to work, but did state that she wished to work as she needs the additional money.

## REASONING AND CONCLUSIONS OF LAW:

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 physician and has not been released as being able to work.

Inasmuch as the illness was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. The inability to work is also caused by claimant's work hours limitation. Claimant is attempting to deal with a variety of difficulties in her family's lives, and dealing with these difficulties necessarily limits claimant's ability to be employed, even when she is released by her physician. Benefits are withheld until such time as the claimant obtains a full medical release to return to work and has flexibility in the hours when she can work.

**DECISION:**

The decision of the representative dated September 23, 2016, reference 04 is affirmed.  
Claimant is not eligible to receive unemployment insurance benefits at this time.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/pjs