

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L DAVIS
Claimant

APPEAL NO. 13A-UI-09293-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINN COUNTY HUMAN RESOURCES DEPT
Employer

OC: 07/07/13
Claimant: Appellant (2)

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness or Injury

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated August 8, 2013, reference 02, that held she is not eligible for benefits July 7, 2013, because she is unable to perform work due to injury. A hearing was held on September 18, 2013. The claimant participated. Diane Losch, HR Assistant, participated for the employer.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant suffered a non-job-related foot injury on May 18, 2013 that was after her March 18 employment separation from the employer. This injury prevented claimant from performing on-call work for the employer in May. When the employer lost funding for the program where claimant was going to do on-call work, it notified claimant in June there was no work available.

Claimant recovered from her foot injury and was released by her doctor without restriction on July 3, 2013.

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".

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 administrative law judge concludes claimant does meet the availability requirements of the law effective July 7, 2013. She had recovered from her May 18 foot injury and she received an unrestricted medical release to return to work on July 3. The test is not whether claimant could perform some work for the employer, but whether she is able and available for any gainful employment upon filing her July 7 unemployment claim. She was.

DECISION:

The decision of the representative dated August 8, 2013, reference 02, is reversed. The claimant meets the availability requirement of the law effective July 7, 2013.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css