

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHANE M BARKER
Claimant

SCHEELS ALL SPORTS INC
Employer

APPEAL 15A-UI-13697-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/15/15
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 4, 2015, (reference 02) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on January 15, 2016. Claimant participated and was represented by Benjamin R. Roth, attorney at law. Employer participated through Adam Zupancic, Store Leader and Kristin Wells, assistant store leader.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from her employment on October 8, 2015 when her Family Medical Leave Act (FMLA) leave expired. At the time she was separated the claimant had work restrictions from a shoulder surgery in July 2015 that prevented her from lifting over 10 pounds and from doing overhead work, including pushing and pulling with her right arm. The claimant is now able to work within her work restrictions and is now beginning to look for work that is within her work restrictions. The claimant was following the employer's policy and was having her work restrictions sent to her employer each time she saw her treating physician. The claimant has not been actively looking for work each week. The one week where she did call in to claim benefits she did make the required job searches. The claimant is required to make the required job searches each week she seeks benefits.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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.

The claimant currently has lifting and use restrictions for her right arm/shoulder. She is able to perform jobs or job tasks for work in the area where she lives. Thus, she is considered able to and available for work effective November 15, 2015. Accordingly, benefits are allowed.

DECISION:

The December 4, 2015, reference 02, decision is reversed. The claimant is able to work and available for work effective November 15, 2015. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs