

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JILL A KIRKPATRICK
Claimant

APPEAL NO. 11A-UI-13550-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/13/11
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 11, 2011 (reference 01) decision that found the claimant unable to work and denied benefits from August 14 through September 10, 2011. After due notice was issued, a hearing was held by telephone conference call on November 10, 2011. Claimant participated. Claimant's Exhibit A was admitted to the record.

ISSUE:

The issue is whether claimant is able to and available for work effective August 14, 2011 through September 10, 2011.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant had a right total hip arthroplasty (replacement) on August 18, 2011 and was released from the hospital on August 22, 2011. She had four weeks of physical therapy starting September 6. She saw Dr. Buck on September 2, 2011, when he removed the surgical staples. Dr. Buck wrote on September 13, 2011 in the present tense that "she is able to work a sit down job, as she tolerates." (Claimant's Exhibit A)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not 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".

871 IAC 24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Since Dr. Buck's release was in the present tense without referencing an earlier date of her ability to work in a sedentary job, the release is effective September 13, 2011, the date of the letter. Accordingly, benefits are denied for the period from August 14 through September 10, 2011.

DECISION:

The October 11, 2011 (reference 01) decision is affirmed. The claimant was not able to work and available for work from August 14 through September 10, 2011. Benefits are denied.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw