

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KATHLEEN M SCHILTZ**  
Claimant

**APPEAL 19A-UI-09000-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 10/13/19  
Claimant: Appellant (4)**

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Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Kathleen Schlitz (claimant) appealed a representative's November 12, 2019, decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was unable to work from October 13, 2019, to October 26, 2019. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was scheduled for December 10, 2019. The claimant was represented by Mary Hamilton, Attorney at Law, and participated personally. The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

**ISSUE:**

The issue is whether the claimant was able and available for work from October 13, 2019, to October 26, 2019. Whether the claimant is able and available for work as of October 10, 2019.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant had surgery on her right elbow on September 20, 2019. She heard her doctor's staff say that she could work half days with some restrictions starting on October 7, 2019. She understood the staff to say she could return to work full-time with restrictions the following week. No written release was issued to the claimant. The claimant's work was sedentary. On October 7, 2019, she returned to work for one week of half day work. On Monday, October 14, 2019, the claimant worked full-time hours. This was her last day of work before she was separated.

The claimant saw her physician on October 17, 2019, but she did not obtain a written work release. The claimant filed for unemployment insurance benefits with an effective date of October 13, 2019.

On December 10, 2019, the claimant's physician issued the claimant a note that said "you may return to work if you can work with these restrictions". Those restrictions were "No lifting anything over 5 pounds for the next 6 weeks. Light activity for 3 weeks but no repetitive

movements. Will have a follow up exam with physician and be given a script to start physical therapy. Gradual increase activity as tolerated after 6 full weeks." The claimant is looking for work where she can talk on the telephone only.

### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant was not able and available for work from October 13 to 26, 2019. She is able and available for work as of December 10, 2019.

Iowa Admin. Code r. 871-24.23(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.

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".

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 has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). The claimant has not provided medical documentation of being able and available for work for the two-week period ending October 26, 2019. When an employee is medically unable to perform work she is considered to be unavailable for work.

On December 10, 2019, the claimant was released to return to work with restrictions for six weeks by her physician. During that time, she is considered to be medically able for work because her physician stated she was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits as of December 10, 2019.

**DECISION:**

The representative's November 12, 2019, decision (reference 02) is modified in favor of the appellant. The claimant is disqualified from receiving unemployment insurance benefits from October 13, 2019, to October 26, 2019, because she is not available for work with the employer.

Benefits are allowed from December 8, 2019, to January 21, 2020, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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