

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDI J BIENFANG
Claimant

APPEAL 17A-UI-12179-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EAST CENTRAL IOWA COOPERATIVE
Employer

**OC: 02/26/17
Claimant: Respondent (2R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the November 20, 2017, (reference 06) unemployment insurance decision that allowed benefits based upon claimant's ability to work. The parties were properly notified about the hearing. A telephone hearing was held on December 18, 2017. Claimant participated. Employer participated through internal accountant Loretta Doepke, CEO Randy Carlholm, and CFO Joe Murphy.

ISSUE:

Is the claimant able to work and available for work effective May 21, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant worked on a full-time basis for employer as an administrative assistant until she was no longer able to work due to a non-work related injury. The wage credits included in claimant's base period were accrued based on pay for full-time work. Claimant received short term disability benefits for six months. The benefits were exhausted at the end of February 2017. Around the same time, claimant was separated from employment. Claimant applied for long term disability benefits, but her claim was denied.

On May 18, 2017, claimant's medical provider wrote a note stating claimant is able to return to work part-time as tolerated with a lifting restriction of ten pounds and no pushing or pulling. The restrictions have not been lifted as of the date of the hearing.

Claimant has been receiving benefits since May 21, 2017.

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 effective May 21, 2017.

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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, **full-time endeavor**, other than self-employment, which is generally available in the labor market in which the individual resides. (emphasis added)

In this case, claimant is not able to work at a full-time endeavor as she has only been released to work on a part-time basis as tolerated. Because claimant accrued wage credits on a full-time basis, she must be able to engage in full-time work in order to collect benefits. Because claimant is only able to work on a part-time basis, she is not considered able to or available for work effective May 21, 2017.

DECISION:

The November 20, 2017, (reference 06) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective May 21, 2017.

REMAND:

This matter is remanded to the Iowa Workforce Development Benefits Bureau for a determination on whether claimant has been overpaid unemployment insurance benefits since May 21, 2017.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn