

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHELSEA L KORF
Claimant

ABCM CORPORATION
Employer

APPEAL 16A-UI-11780-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/25/16
Claimant: Appellant (1)

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 claimant filed an appeal from the October 27, 2016, (reference 01) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to perform work at the time due to surgery. The parties were properly notified of the hearing. A telephone hearing was held on November 15, 2016. The claimant, Chelsea L. Korf, participated. The employer, ABCM Corporation, participated through Sheri Weaver-Isvik, administrator. Employer's Exhibits 1 and 2 were received, but these were not admitted into the record as claimant did not receive them prior to the hearing.

ISSUE:

Is the claimant able to work and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began employment in November 2012 as a full-time CNA. She sustained a non-work-related back injury on May 10, 2016. Around this time, she went on medical leave. Claimant had back surgery on June 22, 2016, and she was released to return to full-duty work on September 1.

On September 22, claimant's doctor put her back on four weeks of light duty, including a ten-pound lifting restriction and a prohibition on bending or twisting, due to her increasing pain and discomfort from the surgery. Claimant was told she needed to build up a tolerance and get used to the pain. According to claimant, the employer accommodated this restriction for approximately one week before she was moved to "variable" status in an as-needed, on-call PNA position.

Claimant has not been released to full-duty work, and she is still restricted from bending and twisting. Claimant testified that she no longer has a lifting restriction. Claimant expects to be released to return to work without any restrictions in the next several weeks.

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 September 25, 2016. Benefits are withheld.

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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Claimant admits she still has restrictions in place from her physician stemming from a non-work-related back injury and surgery. While claimant may be able to perform light work duties that do not require bending or twisting, the employer is not obligated to accommodate a non-work related medical condition. Inasmuch as claimant's medical condition is not work-related and the treating physician has not released the claimant to return to work without restriction, she has not

established her ability to work while still an employee of ABCM Corporation effective September 25, 2016, at minimum through the week ending November 19, 2016.

DECISION:

The representative's decision dated October 27, 2016, (reference 01) is affirmed. The claimant is not able to work and available for work effective September 25, 2016. Benefits are withheld until such time as the claimant obtains a full medical release to return to work without restrictions unless she is involuntarily separated before that time.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/