

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SHONNA J ROUSE**  
Claimant

**APPEAL NO. 07A-UI-10993-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL/CLINICS**  
Employer

**OC: 11/04/07 R: 02  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 28, 2007, reference 01, decision that denied benefits from November 4 through 24, 2007. After due notice was issued, a telephone conference hearing was held on December 13, 2007. Claimant participated. Employer participated through Patti Steelman. Claimant's Exhibit A was received.

**ISSUE:**

The issue is whether claimant is able to and available for work effective November 4, 2007.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time CMA from May 15, 2006 until November 27, 2007 when she quit. She took a Family Medical Leave Act (FMLA) leave of absence from October 22 to November 19, 2007 because of depression related to issues with her supervisor Deb Thompson. Thompson did not allow claimant a day off in advance to take her asthmatic son to the doctor in October but she let other employees off work. About six months prior to the separation Thompson told her staff they would begin to pray at work or they could look for another job. She looked in claimant's medical chart, yelled at her in front of coworkers, made claimant cry in front of patients and discussed claimant being on FMLA in front of patients. In October 2006, May 2007 and September 2007 Thompson told her if she did not return to work while her son was in the hospital that "something was going to happen" insinuating it would be of a disciplinary nature. Claimant advised Steelman of her concerns about Thompson on October 23.

Claimant provided employer with the November 19 work release for the FMLA period but was then hospitalized for non-work-related issues for two days. She called Thompson four times that week but did not hear back from her until November 26. Claimant returned the call and left a message saying she would like to come back to work. Thompson told her she needed another work release. By that time her physician advised her to leave that job. She was unable to transfer because she was written up for her personal and her son's medical absences. Thompson is still employed in the same position but did not participate.

## 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(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.

871 IAC 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 physician and has not been released as being able to work.

Claimant was released to return to work from the FMLA leave dating back to October 22 on November 19, 2007 but was then hospitalized for two days for a non-work-related illness. She did not provide employer with that requested release for the period from November 19 through November 24 and was separated on November 27, 2007. Thus, benefits are withheld for the period from November 4 through November 24, 2007. Benefits are allowed, provided the claimant is otherwise eligible effective November 25, 2007.

**DECISION:**

The representative's decision dated November 28, 2007, reference 01, is affirmed. The claimant is not able to work and available for work for the three-week period ending November 24, 2007. Benefits are allowed effective November 25, 2007.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs