

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENDRA L MCGRAW
Claimant

APPEAL NO: 14A-UI-09606-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/27/14
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 10, 2014, reference 05, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 7, 2014. The claimant participated in the hearing.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed at Casey's. She underwent back surgery July 31, 2014 and was not released without restriction by her treating physician until September 29, 2014. The employer did not have work available for the claimant until October 6, 2014.

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 for the nine-weeks ending September 27, 2014.

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".

The claimant was not able and available for work from July 31, 2014, when she had back surgery, until September 29, 2014 when her physician released her to return to work. Accordingly, benefits are denied through the week ending September 27, 2014. She is eligible to receive benefits the week ending October 4, 2014 when she was released to return to work and the employer did not have work available for her.

DECISION:

The September 10, 2014, reference 05, decision is modified in favor of the claimant. The claimant is not able to work and available for work for the nine-weeks ending September 27, 2014. Benefits are denied for that time period but are allowed for the week ending October 4, 2014.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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