

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DELLA D ELLIOT**  
Claimant

**APPEAL 18A-UI-05126-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 12/24/17  
Claimant: Appellant (4)**

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

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the April 23, 2018, (reference 05) decision that denied benefits effective December 24, 2017 finding the claimant was not able to and available for work due to illness. After due notice was issued, a hearing was held by telephone conference call on May 22, 2018. Claimant participated. Official notice was taken of Iowa Workforce Development (IWD) records.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's job was eliminated on December 29, 2017. The claimant had been suffering from a chronic health condition for many years. After her job was eliminated the claimant applied for unemployment insurance benefits with an effective date of December 24, 2017. She received unemployment insurance benefits through March 31, 2018. During this time period the claimant continued to look for work and attended classes required of her through the reemployment services program of IWD.

On March 23, 2018, claimant became ill with septicemia and was hospitalized until April 6, 2018. The claimant was too ill to do work searches after the week ending March 10, 2018. Her doctors have told her since that time that she should not be working. Claimant has not been released by her treating physician to return to work. She has applied for social security disability benefits and is waiting for a decision from the social security administration.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to and available for work effective March 11, 2018.

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. 871-24.23(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 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 physician and has not been released as being able to work.

The claimant has a number of chronic health conditions that she has lived with for many years. Those conditions did not stop her from working, looking for work or participating in reemployment services until March 11, 2018 when she developed septicemia and was eventually hospitalized. Since being released from the hospital on April 6, the claimant has not been and probably will not ever be released back to return to work by her treating physicians. She is pursuing social security disability benefits. Accordingly, the claimant is considered not able to and available for work effective March 11, 2018, not December 24, 2017.

**DECISION:**

The April 23, 2018, (reference 05) decision is modified in favor of the claimant. The claimant is not able to and available for work effective March 11, 2018. Benefits are denied.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs