

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELSIE J STIENEKE
Claimant

APPEAL NO. 09A-UI-09495-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 05/03/09
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the representative's decision dated June 24, 2009, reference 04, which held the claimant not eligible to receive unemployment insurance benefits from May 5, 2009 through May 12, 2009 because the claimant was unable to work due to a non-work-related illness or injury. After due notice, a telephone conference hearing was scheduled for and held on July 20, 2009. The claimant participated personally. The employer participated by Mr. Josh Burrows, Representative and witnesses, Dani Friedrichesen, Administrator and Denise Petty, Director of Nursing.

ISSUE:

At issue in this matter is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses and having considered the evidence in the record, finds: The claimant began employment with Care Initiatives as a part-time CNA on February 18, 2008. The claimant presented two notes from her chiropractor limiting her to light duty, no lifting from May 5, 2009 through May 12, 2009 due to a non-work-related illness or injury.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes that the claimant is not able and available for work effective May 5, 2009 through May 12, 2009.

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.

In as much as the condition was not work related and the treating physician has not released the claimant to return to full work during the period in question, the claimant has not established availability to work. The employer is not obligated to accommodate a non-work-related medical condition. Benefits are withheld for the period of May 5, 2009 through May 12, 2009.

DECISION:

The representative's decision dated June 24, 2009, reference 04, is affirmed. The claimant is not able to work and available for work May 5, 2009 through May 12, 2009.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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