

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIELLE M MOORE**  
Claimant

**APPEAL NO. 13A-UI-00934-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**OC: 12/16/12**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(1) – Unable to Work/Injury or Illness

**STATEMENT OF THE CASE:**

The claimant appealed from a representative's decision dated January 18, 2013, reference 03, that held she was not able to perform work due to injury as of December 16, 2012, and benefits are denied. A hearing was held on February 25, 2013. The claimant, and Attorney Nathan Reckman, participated. Joe Younker, Attorney; Angie Hoover, Employee Relations/HR; and Barb Ditzler, Nurse Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

The issue is whether claimant is able and available to work.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant worked as a full-time nurse for the employer until her termination on December 17, 2012. The department issued a January 16, 2013 decision that held claimant left with good cause and benefits are allowed. The employer did not appeal.

Claimant had a job-related worker's compensation injury with the employer. She had a 20-pound weight lifting restriction, and a no lifting above the head for 33 percent of performed work. These restrictions remain in force and effect as of the date of this hearing.

Claimant has education and training for employment positions other than the nurse position she performed for the employer. Since January 16 she has applied for 22 jobs in a regional area including Cedar Rapids and Dubuque as well as Milwaukee, Wisconsin. She is looking more for teaching and/or nurse instructing positions.

**REASONING AND CONCLUSIONS OF LAW:**

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".

871 IAC 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.

The administrative law judge concludes claimant is able to perform work and is eligible for benefits effective December 16, 2012. The test is not whether claimant is able to perform nurse work for her former employer but rather any gainful employment given the work restrictions.

Claimant listed a number of nurse-related jobs that appear to emphasize teaching and/or instruction that are within her nurse education and she has expanded her geographical search area to find that work. She is actively and earnestly seeking work for which she is qualified. The employer offered no testimony to refute claimant's ability to do the jobs she is seeking.

**DECISION:**

The decision of the representative dated January 18, 2013, reference 03, is reversed. The claimant is able and available for work effective December 16, 2012. Benefits are allowed, provided claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/tll