

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLLEEN K OWENS
Claimant

APPEAL NO: 12A-UI-08798-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LCG INC
Employer

OC: 06/17/12

Claimant: Appellant (4)

Section 96.4-3 – Able and Available
Section 96.6-3 – Postponements

STATEMENT OF THE CASE:

Colleen K. Owens (claimant) appealed a representative's July 16, 2012 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits because of not being able and available for work after a separation from LCG, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 15, 2012. The claimant participated in the hearing and was represented by Jennifer Zupp, attorney at law. The employer received the hearing notice and responded by contacting the Appeals Section to indicate that an employer witness would be available at the scheduled time for the hearing at a specified telephone number. However, on the day of the hearing, just under two hours prior to the hearing, a representative for the employer contacted the Appeals Section to indicate that the employer's witness would not be available for the hearing because he was on vacation and did not have cell phone reception; the employer's representative requested a postponement of the hearing, but the administrative law judge denied the request. Therefore, the employer did not participate in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the hearing have been postponed?

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The employer received the hearing notice prior to the August 15, 2012 hearing. The instructions inform the parties that they are to be available at the specified time for the hearing, and that if they cannot be reached at the time of the hearing at the number they provided, the judge may decide the case on the basis of other available evidence. The hearing notice also advises against the use of cell phones for hearings due to issues with battery and signal.

The administrative law judge takes official notice that another representative's decision was also issued on July 16, 2012 (reference 02), which concluded that there was a separation from employment between the parties on June 18, 2012, and that the separation was a discharge for

attendance and was not disqualifying to the claimant. The employer has not appealed that decision and it has become final.

The claimant worked full-time as a farrowing technician for the employer since April 6, 2010, usually working Monday through Friday. She had carpal tunnel surgery on her left hand on January 23, 2012. She had surgery on her knees for tears in the ligaments on May 11, 2012. She had carpal tunnel surgery on her right hand on June 11, 2012. Since that June surgery, the claimant was under sufficient work restrictions that she could not return to any full time work until she saw her doctor on July 12, 2012, a Thursday. The claimant was then advised that she was cleared "for [a] sedentary job." Since then, she has been making job applications for clerical and secretarial work, making at least two job contacts weekly.

REASONING AND CONCLUSIONS OF LAW:

The first issue which must be addressed is whether the employer's request for postponement of the hearing only about two hours prior to the scheduled hearing time should have been granted. While reasonable requests for postponement can be granted, good cause must be shown, and at least absent extraordinary emergency situations, a request is to be made within three business days prior to the hearing. Iowa Code § 96.6-3; 871 IAC 26.8(2). The employer did not request the postponement within three days prior to the hearing, and the reason for the request was not shown to be of such an emergency nature as would excuse a failure to have made a timely request for a postponement. The employer's late request to postpone the hearing was properly denied.

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that after her July 12, 2012 doctor's appointment, she is able to work in some gainful employment. Benefits are allowed as of the benefit week beginning July 15, 2012, if the claimant is otherwise eligible.

DECISION:

The representative's July 16, 2012 decision (reference 03) is modified in favor of the claimant. The claimant is able to work and available for work effective July 15, 2012. The claimant is qualified to receive unemployment insurance benefits as of that date, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw