

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

APRIL J WELBORN
Claimant

DOLLAR TREE STORES INC
Employer

APPEAL 19A-UI-04406-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/21/19
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On May 29, 2019, the claimant filed an appeal from the May 21, 2019 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to work according to her physician. The parties were properly notified of the hearing. A telephonic hearing was held on June 25, 2019. The claimant, April J. Welborn, participated. The employer, Dollar Tree Stores, Inc., participated through Ross Plummer, District Manager. Claimant's Exhibit A was received and admitted into the record without objection. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work effective April 21, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began her employment with Dollar Tree on December 21, 2016. She began as a cashier and worked her way up to a freight manager position. Claimant is a full-time employee.

Claimant last reported to work on November 2, 2018. Claimant stopped reporting to work after that date because she had a work-related shoulder injury. Claimant reported this injury to the employer and filled out worker's compensation paperwork. Claimant had surgery in February 2019.

Claimant was released to return to work in April 2019. Claimant's doctor released her to return with restrictions. Claimant took the doctor's release into the store and handed it to a member of management. Later, she received a call from someone at corporate who told her that she could not come back to work until she was 100% and released with no restrictions.

Claimant was released to return to work with no restrictions on June 3, 2019. (Exhibit A) Claimant took this doctor's release directly to the store and handed it to the store manager.

Claimant did not hear back from the employer until after her fact-finding interview occurred on June 15, 2019. Claimant was allowed to return to work on June 17, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to work.

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.

Iowa Admin. Code r. 871-24.22(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...

Iowa Admin. Code r. 871-24.23 provides in relevant part:

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.

...

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

In this case, claimant provided unrefuted testimony that she suffered a work-related injury in November 2018. Claimant was off work for approximately six months due to this injury. She then presented a doctor's note indicating she was able to work with some restrictions. As the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions, the claimant has established her ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The May 21, 2019, (reference 02) unemployment insurance decision is reversed. Claimant has established she is able to work and available for work effective April 21, 2019. Benefits are allowed, provided claimant is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn