

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JANET K HARTUNG
Claimant

APPEAL NO. 14A-UI-11011-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/23/14
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Janet Hartung filed a timely appeal from the October 10, 2014, reference 02, decision that denied benefits effective September 7, 2014, based on an Agency conclusion that she was unable to work due to surgery and did not meet the availability requirement. After due notice was issued, a hearing was held on November 13, 2014. Ms. Hartung participated. The hearing in this matter was consolidated with the hearing in Appeal Number 14A-UI-11012-JTT. Exhibit A and Department Exhibits D-1 through D-4 were received into evidence. The administrative law judge took official notice of the October 10, 2014, reference 03, decision that allowed benefits to the claimant effective October 5, 2014, based on an Agency conclusion that she was medically able to work and available for work.

ISSUES:

Whether Ms. Hartung was able to work and available for work during the period of September 7, 2014 through the benefit week that ended October 4, 2014.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Janet Hartung established a claim for benefits that was effective March 23, 2014 and received benefits. Ms. Hartung's weekly benefit amount was set at \$354.00. The benefits that Ms. Hartung received included \$354.00 for the weeks ending September 13, 20, and 27, 2014. The total amount of benefits paid to Ms. Hartung for those three weeks was \$1,062.00. On Wednesday, September 10, 2014, Ms. Hartung underwent outpatient surgery on her left foot to address multiple hammer toes. The procedure included removal of bone from two toes and cutting a tendon or ligament in a third toe. Ms. Hartung was fitted with a walking boot. During the week of the surgery, the week that ended September 13, 2014, Ms. Hartung did not look for work because she was undergoing and recovering from surgery.

During the week that began September 14, 2014, Ms. Hartung recommenced her search for new employment. Ms. Hartung made two employer contacts during the weeks that ended September 20 and 27, 2014. Ms. Hartung has experience as a clerical worker. During the week that ended September 20, Ms. Hartung made contact with an auto repair shop and a

coffee shop. During the week that ended September 27, Ms. Hartung made contact with a newspaper and a flooring store.

Ms. Hartung discontinued her claim for benefits after the week that ended September 27, 2014.

Ms. Hartung established an additional claim for benefits that was effective October 12, 2014. On October 9, 2014, Ms. Hartung provided Workforce Development with a handwritten note, dated October 9, 2014, from a podiatrist affiliated with Eastern Iowa Foot Specialists, P.C. The note was on a prescription pad form. The note indicated, "Had surgery 9-10-14. No restrictions after surgery."

On October 10, 2014, an Iowa Workforce Development claims deputy entered two decisions in connection with Ms. Hartung's claim for benefits. The reference 02 decision denied benefits effective September 7, 2014, based on an Agency conclusion that Ms. Hartung was unable to work due to surgery and did not meet the availability requirement. The reference 03 decision allowed benefits effective October 5, 2014, based on an Agency conclusion that Ms. Hartung was again medically able to work and available for work. Ms. Hartung had not provided medical proof of her ability to work or her availability for work prior to October 5, 2014.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a and (2) provide:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 medical practitioner and has not been released as being able to work.

Ms. Hartung concedes that she was unable to work and unavailable for work during the week that ended September 13, 2014. Ms. Hartung underwent surgery on her multiple toes, was recovering from the surgery, was on pain medication, and was fitted with a walking boot. The weight of the evidence indicates that Ms. Hartung was not able to work and available for work within the meaning of the law prior to the week that started October 5, 2014. On September 10, 2014, Ms. Hartung underwent surgery that involved removal of bone from two toes and cutting of a tendon or ligament in a third toe. A reasonable person would not conclude that full recovery from such a procedure could or would take place within four days, in other words, by the end of that week. The doctor's decision to prescribe a walking boot indicated a longer period of recovery. Ms. Hartung's testimony regarding her need to recover from the surgery during the week that ended September 13 indicates that the October 9, 2014, note indicating no restrictions following the surgery cannot be accurate. Ms. Hartung has presented insufficient evidence to demonstrate that she was indeed able to work and available for work within the meaning of the law prior to the week that started October 5, 2014. Because the Agency entered a decision that allowed benefits effective October 5, 2014, the administrative law judge need not address Ms. Hartung's work ability or availability as of that date.

DECISION:

The October 10, 2014, reference 02, decision is affirmed. The claimant was not able to work or available work within the meaning of the law effective the week that started September 7, 2014. The claimant has failed to demonstrate that she was able to work and available for work within the meaning of the law prior to the benefits week that started October 5, 2014. Benefits are denied for the four-week period of September 7, 2014 through October 4, 2014.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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