

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA FLOWERS

Claimant

APPEAL NO. 15A-UI-00628-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILLS COUNTY

Employer

OC: 12/14/14

Claimant: Respondent (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 6, 2015, reference 02, decision that allowed benefits to the claimant effective December 14, 2014 provided the claimant was otherwise eligible, based on an Agency conclusion that the claimant was medically able to work and available for work within the meaning of the law. After due notice was issued, a hearing commenced on March 5, 2015 and concluded on March 13, 2015. Claimant Sheila Flowers participated personally and was represented by attorney Whitney Judkins. Tricia McSorley, Mills County Attorney, represented the employer and presented testimony through Sheri Bowen, Administrator for Mills County Public Health. The hearing in this matter was consolidated with the hearing in Appeal Number 15A-UI-00627-JTT. Exhibits Two through Nine and A through D and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant.

ISSUES:

Whether the claimant has been able to work and available for work since the claimant established the claim for unemployment insurance benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sheila Flowers established a claim for benefits that was effective December 14, 2014 and received \$1,100.00 in benefits for the five-week period of December 21, 2014 through January 4, 2015. Ms. Flowers' weekly benefit amount was set at \$220.00. Ms. Flowers established her claim for benefits in connection with her December 11, 2014 discharge from a part-time receptionist/office assistant position with Mills County.

Ms. Flowers suffers from a chronic back condition. The underlying issue is a vertebral disk chip located at L5 that is on a nerve. The condition may lead to surgery at some point, an outcome that Ms. Flowers is hoping to defer or forego entirely. Ms. Flowers' condition necessitates use of a steroid medication, an anti-inflammatory medication, and muscle relaxing medication.

Ms. Flowers' chronic back condition did not prevent Ms. Flowers from performing her clerical duties, with the exception of being unable to perform occasional heavy lifting. Though there were days when Ms. Flowers had difficulty using stairs, she was able to utilize an elevator to move between floors in the workplace.

Ms. Flowers did not provide medical documentation of her health condition and her ability to work for the appeal hearing, but had provided a statement of her medical restrictions, dated January 5, 2015, for the January 5, 2015 fact-finding interview. The document is from James Devney, D.O., of Spine and Musculoskeletal Medicine in Omaha. The document indicates that Ms. Flowers had most recently been seen on December 15, 2014 and that she was able to return to work effective December 16, 2014 with a restriction that she perform sedentary work and not lift more than 10-20 pounds in the next 30 days. That period included the six-week period of December 14, 2014 through January 24, 2015, during which Ms. Flowers' unemployment insurance claim was active. During that period Ms. Flowers made the required number of contacts with prospective employers as part of her search for new employment.

REASONING AND CONCLUSIONS OF LAW:

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. 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".

Iowa Admin. Code r. 871-24.22(1)a, (2) 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.

(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.

The weight of the evidence in the record establishes that Ms. Flowers was medically able to perform work, was available for work, and made appropriate job contacts during the six-week period of December 14, 2014 through January 24, 2015, when her unemployment insurance claim was active. Ms. Flower's provided a medical note that indicated she was able to perform sedentary work and was limited to lifting no more than 10 to 20 pounds. Ms. Flowers demonstrated the medical ability to perform clerical work through the employment at Mills County Public Health. There is no reason to believe that her medical ability to perform work diminished once she filed her claim for unemployment insurance benefits. Accordingly, Ms. Flowers was eligible for benefits for the six-week period of December 14, 2014 through January 24, 2015 provided she met all other eligibility requirements.

The claimant's separation from the employment will be addressed in a separate decision.

DECISION:

The January 6, 2015, reference 02, decision is affirmed. The claimant was medical able to perform work, was available for work, and made appropriate job contacts during the six-week period of December 14, 2014 through January 24, 2015, when her unemployment insurance claim was active. Accordingly, the claimant was eligible for benefits for the six-week period of December 14, 2014 through January 24, 2015 provided she met all other eligibility requirements.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs