

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA L SHAFER
Claimant

AMAZON.COM SERVICES INC
Employer

APPEAL 23A-UI-10270-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/20/23
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the October 25, 2023 (reference 01) unemployment insurance decision that had denied unemployment insurance benefits to her effective August 20, 2023 based upon her not being able to and available for work. The parties were properly notified of the hearing, and it was scheduled for November 20, 2023. The claimant participated personally and was represented by attorney Richard Schmidt. The employer did not participate. Claimant's Exhibits 1-4 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records. The hearing was consolidated with Appeal No. 23A-UI-10271-DB-T.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for this employer as a full-time stower in its fulfillment warehouse. She worked 10-hour days Monday, Tuesday, Thursday, and Friday each week. On March 7, 2021, the claimant fell in the employer's parking lot when she slipped on ice. This resulted in a rib fracture injury. See Exhibit 1. Claimant did work for a few days after her injury in 2021 but does not recall the exact dates. Claimant was told at that time by the employer that she could not return to work because she still had restrictions. She has not performed services for wages from this employer since 2021.

Claimant was treated and placed at maximum medical improvement effective March 1, 2023, with a 5% whole body impairment rating. See Exhibit 1. She has permanent work restrictions that include lifting restrictions between 12-15 pounds and other restrictions from her standing or sitting for too long. See Exhibit 2.

In prior years, claimant was an event coordinator of 12 years in Seattle. Claimant believes she could perform this type of office related work again because she would not be required to work outside her restrictions based on those job duties. Claimant has been searching for full-time

work within her working restrictions. Claimant has contacted this employer regarding whether they have work within her restrictions and has yet to receive an answer.

Claimant's administrative records establish wages from this employer in her base period for quarters in 2022 and 2023; however, the claimant has not performed services for wages for this or any other employer since 2021. The claimant believes that the wage records reported by this employer could be payments she received regarding a long-term disability policy. Claimant received long term disability payments and worker's compensation payments regarding this work-related injury; however, her worker's compensation benefits ended on August 24, 2023.

The issue of whether the claimant's monetary record is correct; whether the claimant has sufficient wages in her base period to be monetarily eligible for benefits; and whether the claimant's base period may be adjusted due to her receipt of worker's compensation benefits is remanded to the Benefits Bureau of Iowa Workforce Development for additional investigation and determinations.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.4(3)a provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 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.

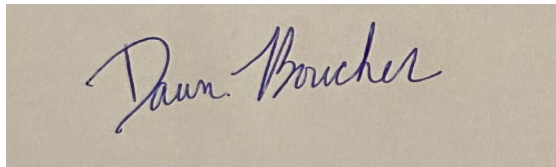
The burden is on the claimant to establish that she is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. In this case, the claimant credibly testified that she is able to work and available for work in an office job performing job duties within her restrictions. Claimant has a work history of performing office related tasks. As such, the claimant has established that she is able to and available for work effective August 20, 2023. Benefits are allowed, provided the claimant remains otherwise eligible, including being monetarily eligible for benefits pursuant to the remanded issues.

DECISION:

The October 25, 2023 (reference 01) unemployment insurance decision is reversed. Claimant has been able to and available for work since her original claim date of October 20, 2023. Unemployment insurance benefits are allowed, provided the claimant remains otherwise eligible.

REMAND:

The issue of whether the claimant's monetary record is correct; whether the claimant has sufficient wages in her base period to be monetarily eligible for benefits; and whether the claimant's base period may be adjusted due to her receipt of worker's compensation benefits is remanded to the Benefits Bureau of Iowa Workforce Development for additional investigation and determinations as the claimant testified that she has not worked for this employer, or any employer, since her date of injury on March 7, 2021. Claimant believes that wages reported by this employer in her base period may consist of long term disability payments and not wages.



Dawn Boucher
Administrative Law Judge

November 21, 2023
Decision Dated and Mailed

db/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, IA 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, IA 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.