

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**REBECCA L WORTHY**  
Claimant

**BERTCH CABINET MFG INC**  
Employer

**APPEAL NO. 19R-UI-07779-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/04/19**  
**Claimant: Appellant (2R)**

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Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated August 21, 2019 reference 04, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 25, 2019. Claimant participated personally. Employer participated by Mark Melcher. Employer's Exhibits 1-3 were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired by employer in May, 2019. From the time of her hire until job separation on or around August 8, 2019, claimant missed three weeks of work due to a growth on her lungs that affected her breathing. On August 8, 2019 claimant brought additional medical documentation asking that she be able to take that week off from work for medical reasons. Claimant and employer reached an agreement that claimant would no longer work for employer. Claimant framed this as a termination. Employer framed it as a quit.

Claimant kept in touch with employer each time she missed work and presented doctors' excuses for each absence. The doctors' excuses did not state that claimant had any ongoing restrictions on each occasion when she returned to work. Claimant additionally stated that she has continued to be a PRN during this time period.

**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 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 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.

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 physician and has not been released as being able to work.

The information received in this matter indicates that claimant is periodically not able and available for work. Each of the times when claimant had not been able and available for work because of her illness, she was then released back to work with no restrictions. Neither claimant nor employer provided documentation stating that claimant was not able to work in an ongoing basis. As claimant stated, she had at least five hospitalizations since her date of hire by employer. During each of these dates where she was hospitalized, she was not able to work. Claimant has shown that outside of these periods she has been able and available to work through her ongoing work as a PRN. She is eligible to receive benefits during those weeks that medical professionals do not exclude her from work, provided claimant meets all other eligibility requirements.

**DECISION:**

The decision of the representative dated August 21, 2019, reference 04 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective August 4, 2019 for those weeks when she can prove she is able and available as her availability is periodic, provided claimant meets all other eligibility requirements. This matter is remanded to the fact finder for determination on the separation issue.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn