

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

TRACI A WINK
Claimant

APPEAL NO. 20A-UI-04621-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/22/20
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Traci Wink (claimant) appealed a representative's May 20, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits because she was not able and available for work with Care Initiatives (employer) as of March 22, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 11, 2020. The claimant participated personally. The employer was represented by Karel Clark, Appellate Hearing Representative, and participated by Tanner Mackey, Administrator.

The claimant offered and Exhibit A was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the 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 that: The claimant was hired on September 8, 2014, as a part-time certified nursing aid. She was hired to work every other weekend. When the census went up, the employer asked the claimant if she would like to also work as an activity aid only while the census was high. When the census declined, there would be no hours. The claimant agreed. The census declined and as of February 26, 2020, there were no hours for the claimant as an activity aid. At the end of her employment she was earning \$6.59 per hour. In the last six weeks of employment, she worked an average of six hours per week for the employer.

The claimant was diagnosed with a non-work-related degenerative disc/back pain. Her doctor issued her various notes with restrictions. On February 24, 2020, she was restricted to working four-hour shifts. The employer accommodated her restriction. The claimant last performed services for the employer on March 15, 2020. The doctor restricted her from working at all from March 18, 2020, through May 15, 2020.

The claimant filed for unemployment insurance benefits with an effective date of March 22, 2020. Her weekly benefit amount was determined to be \$223.00. The claimant received no unemployment insurance benefits since she filed on March 22, 2020.

On May 16, 2020, the doctor said the claimant could return to work with a fifteen-pound lifting restriction. That release covered the timeframe of May 16, 2020, through June 15, 2020. The employer went through the "Reasonable Accommodation Process" and found it could not accommodate the claimant's lifting restriction.

The claimant has not been released to return to work without restrictions. There is continuing work available for the claimant as a certified nursing assistant. Census count is low and there has not been work for the claimant as an activity aid since February 26, 2020.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not available for work.

Iowa Admin. Code r. 871-24.23(1) provides:

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When employees are unable to perform work due to a medical condition for their employer, they are considered to be unavailable for work. The claimant's doctor restricted her from working from March 18, 2020, to May 15, 2020. The claimant is disqualified from receiving unemployment insurance benefits during that time.

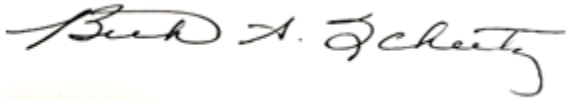
After May 15, 2020, the claimant has not been able to perform the essential functions of her job due to her medical restrictions. She is not able and available to perform work with this employer. The claimant has not been released to perform her regular duties. The claimant is considered to be unavailable for work as of March 22, 2020. The claimant is disqualified from receiving unemployment insurance benefits beginning March 22, 2020, due to her unavailability for work.

Should the claimant's circumstances change, she should notify the employer and the department immediately.

DECISION:

The representative's May 20, 2020, decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits as of March 22, 2020, due to unavailability for work with the employer.

Should the claimant's circumstances change, she should notify the employer and the department immediately.

A handwritten signature in black ink, reading "Beth A. Scheetz". The signature is written in a cursive style with a large initial "B".

Beth A. Scheetz
Administrative Law Judge

June 26, 2020
Decision Dated and Mailed

bas/sam