

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROSELYN M EGAN**  
Claimant

**ADVANCED HOME HEALTH CARE INC**  
Employer

**APPEAL 18A-UI-10981-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/07/18  
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 30, 2018, (reference 01) unemployment insurance decision that denied benefits based upon a determination that she on a leave of absence and not available for work. The parties were properly notified about the hearing. A telephone hearing was held on November 27, 2018. Claimant participated and testified. Employer did not participate. Claimant's Exhibit A was received into evidence.

**ISSUE:**

Is the claimant able to work and available for work effective October 7, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer on April 25, 2017 as a certified nursing assistant (CNA). In September 2018 claimant had an accident while at home, which required her to undergo surgery on September 26, 2018. Claimant has been on leave under the Family Medical Leave Act (FMLA) since September 26, 2018. Following her surgery claimant was released to return to work with a five pound lifting restriction. Claimant also has limited mobility in her wrist due to her injury. The lifting restriction and limited mobility prevent claimant from being able to perform her regular job duties. The employer did not have work within these restrictions, so claimant remained on FMLA leave. Claimant returned to her doctor on November 20, 2018 and her lifting restriction was changed to no more than 10 pounds. Claimant has not notified the employer of this change. At this time, claimant's doctor is unsure if the lifting restriction will be permanent and another surgery is scheduled for December 19, 2018.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective October 7, 2018.

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(10) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as the medical condition is not work-related and the treating physician has not released the claimant to return to work without restriction, she has not established her ability to work while still an employee of Advanced Home Health Care. While she may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, thus until claimant is released to perform her full work duties, she is not considered able to or available for work.

**DECISION:**

The representative's decision dated October 30, 2018, (reference 01) is affirmed. The claimant is not able to work and available for work effective October 7, 2018. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs