

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MOLLY HUPP Claimant RUSSELL CORPORATION Employer	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO: 07-UI-09578-BT</div> <div>ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 12/10/06 R: 01 Claimant: Appellant (2)</div>
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Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Molly Hupp (claimant) appealed an unemployment insurance decision dated October 2, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she was not able to work due to an injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 29, 2007. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to 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 worked as a full-time production day laborer since before 2004 when Russell Corporation took over the company. She was taken off work in July 2006 due to non-work-related surgery on her spine. She was released to return to work on October 23, 2006 with restrictions of no lifting over 15 pounds and no repetitive bending or twisting. The claimant returned to work and was able to complete her regular job duties. Her six month examination in January 2007 yielded the same results but her July 27, 2007 doctor visit resulted in decreased restrictions. The claimant was then able to lift up to 30 pounds but was still unable to do any repetitive bending and twisting. She turned in her new restrictions on July 27, 2007 and the employer told her on July 30, 2007 that it could no longer accommodate her restrictions. The claimant was released without restrictions on September 12, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the

record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. See 871 IAC 24.22(1)(a).

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".

871 IAC 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 claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). Although the claimant was unable to work from July 2006 through October 26, 2006 due to a non-work-related injury, she was able to perform work after that. Even with work restrictions, the claimant successfully performed her regular job duties from October 26, 2006 through July 30, 2007 when the employer advised her it could no longer accommodate her restrictions. The claimant's restrictions had even been reduced on July 27, 2007. The claimant has established that she was able and available for work from October 26, 2006 to the present. Benefits are allowed.

DECISION:

The unemployment insurance decision dated October 2, 2007, reference 01, is reversed. The claimant is able and available to work and benefits are allowed.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs