

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALESIA DAVIS**  
Claimant

**APPEAL NO. 07A-UI-11277-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SHRIJEE INC**  
Employer

**OC: 11/04/07 R: 02  
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated December 03, 2007, reference 01, that held claimant eligible for unemployment insurance benefits. After due notice was issued, a telephone hearing was held on December 20, 2007. The claimant participated. The employer participated by Dennis Patel.

**ISSUE:**

The issue is whether the claimant is able and available for work beginning November 14, 2007.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant worked for this employer from April 2005 until November 2, 2007, when she was temporarily hospitalized due to high blood pressure. Ms. Davis held the position of full-time assistant general manager and worked under the supervision of Mr. Andy Patel. Prior to being released from the emergency room on November 2, 2007, the claimant contacted Andy Patel. Although able and willing to return to work that day, the claimant was instructed to wait until after a November 5, 2007, doctor's appointment to re-contact the employer. Ms. Davis re-contacted Mr. Patel as directed and, although willing to return to work that day, was again instructed to re-contact Mr. Patel after the claimant's next doctor's appointment, which would take place on November 14, 2007. The claimant had been informed that she had been taken off the schedule. Upon re-contacting Andy Patel on November 14, following her most recent doctor's visit, the claimant again indicated her willingness and ability to return to work but again was told that she had been taken off the schedule. Mr. Patel stated, "You need to be 100 percent to be here." The claimant was not again informed to re-contact Mr. Patel.

Based upon the employer's statement that the claimant had been taken off the schedule although she had indicated her willingness to return to work, Ms. Davis opened a claim for unemployment insurance benefits effective November 4, 2007. When the claimant reasonably concluded, following the November 14, 2007 conversation, that work did not continue to be available to her with Comfort Inn of Ankeny, she began to actively seek other employment. At the time of the hearing, the claimant had become re-employed.

It is the employer's position that the claimant was instructed to report for work on November 21, 2007, and that she failed to do so or to provide notification to the employer.

#### **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge in this case is whether the evidence establishes that Ms. Davis was able and available for work beginning November 14, 2007. It does.

The evidence in the record establishes that although the claimant had been hospitalized briefly on November 2, 2007, she had been released by her physician without work restrictions and had informed her employer of her ability and availability to return to work. Despite being able and available to work, the employer repeatedly told the claimant that she had been taken off the schedule and did not allow the claimant to return to work. During the last conversation between the claimant and her supervisor, Andy Patel, the claimant testified that she was specifically told that she had been taken off the schedule although the claimant had been fully released to return to work by her physician. The claimant testified under oath that she had been given no further instruction to return at a later date. The claimant reasonably concluded that she had been separated from employment.

The evidence in the record established that the claimant is able and available for work as of November 14, 2007, and has actively and earnestly sought re-employment, and that her search has resulted in employment at the time of hearing.

871 IAC 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.

**DECISION:**

The fact-finder's decision dated December 3, 2007, reference 01, is hereby affirmed. The claimant is able and available for work beginning November 14, 2007, and eligible to receive unemployment insurance benefits, provided she meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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