

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MICHELLE R SHADE
Claimant

APPEAL NO. 14A-UI-08583-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

OC: 07/20/14
Claimant: Appellant (2/R)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 14, 2014, reference 05, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 25, 2014. Claimant participated personally and had as a witness Donna Lowery. Employer participated by Alex Fagan.

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 employed by employer from November 2013 until March 2014. In March, claimant was hired to work for a subcontractor of employer on a full-time basis. Once that employment ended, claimant was rehired to work for employer on June 14, 2014. Claimant worked for employer until June 20, 2014

On June 20, 2014 claimant was admitted to the hospital for an illness. Claimant had informed employer that she was entering the hospital. Claimant remained in the hospital for three weeks. When claimant left the hospital she did not contact employer. Claimant has had no contact with the employer since her last day of work, other than her mother picking up her last paycheck.

Claimant received a release from her doctor to return to full duty work on July 21, 2014. Since that date, claimant has been actively seeking other employment, but has not contacted employer to seek to be rehired.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Inasmuch as the illness was not work-related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. The administrative law judge has found that the decision of the fact finder concentrated on the issue of whether claimant was able and available for work. As that matter has now been determined, the issue of separation must be explored by the fact finder.

DECISION:

The decision of the representative dated August 14, 2014, reference 05 is reversed. Claimant is eligible to receive unemployment insurance benefits, based on her being able and available to work effective July 21, 2014. This matter is remanded to the fact finder to determine whether the separation issue, and whether the separation itself, will serve to disqualify claimant from receiving unemployment benefits.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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