

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JENNIFER FORREST**  
Claimant

**HILTON WORLDWIDE INC**  
Employer

**APPEAL 17A-UI-02510-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/29/17**  
**Claimant: Respondent (2R)**

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Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the February 22, 2017 (reference 01) unemployment insurance decision that found claimant was eligible for unemployment benefits. The parties were properly notified of the hearing. A telephone hearing was held on March 29, 2017. The claimant, Jennifer Forrest, did not participate. The employer, Hilton Worldwide Inc., participated through witness Michelle Clark. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits record including the fact-finding documents.

**ISSUE:**

Was the claimant able to work and available for work effective January 29, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a housekeeper. Claimant began her employment on December 7, 2015 and is still employed with this employer. Claimant suffered a non-work related injury and requested a leave of absence from January 16, 2017 through January 31, 2017. However, claimant was released back to work with restrictions on January 20, 2017. Claimant's restrictions included that she could not use her right hand. She worked for the employer for two days on January 20, 2017 and January 21, 2017 and then did not work again until February 2, 2017. Claimant was not on the schedule to work because she had requested a leave of absence until January 31, 2017, which was granted. However, the employer offered for claimant to work with another co-worker the benefit week ending February 4, 2017 but claimant refused because she did not get along with this other co-worker. It would have been necessary for claimant to work with a co-worker because her job duties included making beds and other tasks that she would have been unable to complete with her restrictions.

There has been no initial investigation and determination regarding an overpayment of benefits paid to claimant. The question of whether the claimant is overpaid benefits will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work effective January 29, 2017.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

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)).

The medical condition claimant suffered from was not work-related. Employers are not obligated to accommodate a non-work related injury or illness. Further, claimant requested and was granted a leave of absence.

Iowa Admin. Code r. 871-24.22(2)(1)(2)(3) provides:

Benefit 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.

*j. Leave of absence.* A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee-individual, and the individual is considered ineligible for benefits for the period.

(1) If at the end of a period or term of negotiated leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits.

(2) If the employee-individual fails to return at the end of the leave of absence and subsequently becomes unemployed the individual is considered as having voluntarily quit and therefore is ineligible for benefits.

(3) The period or term of a leave of absence may be extended, but only if there is evidence that both parties have voluntarily agreed.

Claimant's leave of absence was a voluntary period of unemployment. Benefits are denied for the one-week period ending February 4, 2017.

**DECISION:**

The February 22, 2017 (reference 01) unemployment insurance decision is reversed. The claimant was not able to and available for work effective January 29, 2017. Benefits are denied for the one-week period ending February 4, 2017.

**REMAND:** The issue of overpayment of benefits shall be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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