

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**SHAMIKA D MILLER**  
Claimant

**APPEAL NO. 18A-UI-05887-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NATIONWIDE MUTUAL INSURANCE CO**  
Employer

**OC: 04/29/18**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Shamika Miller filed a timely appeal from the May 23, 2018, reference 02, decision that denied benefits effective April 29, 2018, based on the Benefits Bureau deputy's conclusion that Ms. Miller was unable to perform work due to illness. After due notice was issued, a hearing was held on June 13, 2018. Ms. Miller participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate in the appeal hearing. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, KCCO and the May 31, 2018, reference 03, decision.

**ISSUES:**

Whether Ms. Miller has been able to work and available for work within the meaning of the law since she established her original claim for unemployment insurance benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Shamika Miller established an original claim for benefits that was effective April 29, 2018. Ms. Miller has made weekly benefit claims each week since she established the original claim. Ms. Miller's base period for purposes of the claim consists of the four calendar quarters in 2017. Throughout the base period, Ms. Miller was employed by Nationwide Mutual Insurance Company as a full-time member care representative. The work was telephone and computer-based and was essentially customer service work. In 2018, Ms. Miller voluntarily reduced her status at Nationwide from full-time to part-time. Ms. Miller then worked a 10:00 a.m. to 3:00 p.m. shift five days per week, 25 hours per week, until the employer discharged her from the employment on May 1, 2018. Iowa Workforce Development had entered a final agency decision that held the discharge was for excessive absences, that the absences were due to illness and were properly reported, and that the discharge was not for misconduct in connection with the employment. See the May 31, 2018, reference 03, decision. Ms. Miller had gone off

work due to illness on April 6, 2018 and remained off work due to illness until the May 1, 2018 discharge.

Ms. Miller's decision to reduce her full-time employment at Nationwide to part-time employment and her extended absence from that employment from April 6, 2018 to the May 1, 2018 discharge date, were based on her chronic medical condition. In 2016, Ms. Miller was diagnosed with congestive heart failure. Ms. Miller has also been diagnosed with anxiety, panic disorder, and depression.

In response to an Iowa Workforce Development request, Ms. Miller had provided medical documentation from her therapist, a licensed independent social worker. The documentation references a need to be completely off work due to illness during the period of January 3, 2018 through March 5, 2018 and April 6, 2018 through the end of the Nationwide employment. The documentation references Ms. Miller otherwise having been able to work the 10:00 a.m. to 3:00 p.m., 25-hour week reduced work schedule, her need for extra breaks, and her need to continue therapy.

Ms. Miller did not immediately commence her search for new employment once she established the original claim for benefits that was effective April 29, 2018. During the week that ended May 5, 2018, Ms. Miller did not make employer contacts. For the weeks between May 6, 2018 and June 9, 2018, Ms. Miller made two or more employer job contacts. Ms. Miller has an associate's degree in business management and marketing.

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

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. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

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.

The weight of the evidence in the record establishes that Ms. Miller has not been able to work and available for work within the meaning of the law since she established her original claim for benefits. Ms. Miller's unemployment insurance benefit eligibility is based on a base period history of full-time employment. The weight of the evidence in the record fails to establish that Ms. Miller has been released by a medical provider or by a mental health provider to return to full-time employment. Accordingly, benefits are denied effective April 29, 2018. The able and available disqualification continued through the benefit week that ended June 9, 2018. The able and available disqualification will continue until Ms. Miller presents competent evidence establishing that she has been released to return to full-time employment. Ms. Miller must meet all other eligibility requirements.

**DECISION:**

The May 23, 2018, reference 02, decision is affirmed. The claimant has not been able to work and available for work within the meaning of the law since she established her original claim for benefits. Benefits are denied effective April 29, 2018. The able and available disqualification continued through the benefit week that ended June 9, 2018. The able and available disqualification will continue until the claimant presents competent evidence establishing that she has been released to return to full-time employment. The claimant must meet all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs