

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

RAMSAY K CRAUSBY
Claimant

APPEAL NO. 17A-UI-06535-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADE INC
Employer

OC: 05/21/17
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated June 15, 2017 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on July 14, 2017. Claimant participated personally. Employer participated by Allen Evans. Claimant's Exhibit A was admitted into evidence.

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 had bunion surgery on her foot on June 16, 2017. Claimant stated that the recovery time from this bunion surgery is expected to be eight weeks, as she had bunion surgery on her other foot earlier in the year. At this time claimant remains unable to do any type of work. Claimant has not been released by her doctor for any type of work.

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. 871-24.23(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 injury was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

The Supreme Court ruled that a claimant with a non-work related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

DECISION:

The decision of the representative dated June 15, 2017, reference 02 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective June 16, 2017.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn