

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAZZMAND J MARTIN
Claimant

SHEARERS FOODS BURLINGTON LLC
Employer

APPEAL 19A-UI-01028-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/25/18
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 28, 2019, (reference 03) unemployment insurance decision that denied benefits based upon a determination that claimant was not able to and available for work. The parties were properly notified of the hearing. A telephonic hearing was held on February 20, 2019. The claimant, Jazzmand J. Martin, participated and was represented by Niko Pothitakis, Attorney at Law. The employer, Shearers Foods Burlington, L.L.C., registered a participant but was not available when called at the hearing time. Claimant's Exhibits A1 through A11 were received and admitted into the record. The administrative law judge took official notice of the administrative record.

ISSUE:

Is the claimant able to work and available for work effective January 6, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed by Shearers Foods until January 7, 2019, when she separated from employment. At the time of her separation, claimant was working on light-duty with active work restrictions preventing her from using her left arm. On January 10, 2019, claimant went to the doctor and received an updated work restriction. (Exhibit A8) This doctor's note allows claimant to work with no pushing, pulling, or lifting greater than two pounds with her left arm. It also restricts claimant from working above chest high with her left arm. Claimant has since returned to the doctor and had these restrictions changed to a five-pound pushing, pulling, and lifting restriction with her left arm. (Exhibit A11)

Claimant is actively looking for work. She has experience working in fast food environments and in housekeeping and janitorial jobs. Claimant has applied for work as a gas station attendant and at fast food restaurants. Claimant testified that she feels capable of doing housekeeping and janitorial work as well, though she does not yet feel capable of returning to a factory environment. Claimant has been available for work since her separation from

employment. There have not been any periods where she has been ill, out of town, or otherwise unable to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is able to and available for work. Benefits are allowed, provided claimant is otherwise eligible.

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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

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.

An individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. Claimant has established that she is physically able to work. As she separated from her position at Shearers Foods, she is not required that she could perform that specific job. She is only required to establish that there is full-time work available in the labor market that she is capable of performing. Claimant testified that she is applying for fast-food and gas station positions, both of which she could reasonably perform given her restrictions. The administrative law judge finds that claimant is able to work. Further, claimant's unrefuted testimony establishes she is available for work and actively and earnestly seeking work. Therefore, benefits are allowed, provided claimant is otherwise eligible.

DECISION:

The January 28, 2019, (reference 03) unemployment insurance decision is reversed. Claimant is able to and available for work effective January 6, 2019. Benefits are allowed, provided claimant is otherwise eligible.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn