

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROBIN M MOON-CLAYTON
Claimant

CENTRAL IOWA HOSPITAL CORP
Employer

APPEAL NO. 16A-UI-08661-B2

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/17/16
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 August 8, 2016 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held in person on August 26, 2016. Claimant participated personally. Employer participated by Kari Buckalew.

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 stated that she was injured while operating a push cart at work. She heard her back pop on or around December 1, 2015, and has been experiencing back pain since that time.

Claimant was placed on short term disability after her injury until July 12, 2016. After her disability ran out claimant applied for unemployment benefits. At the time of applying for benefits, claimant had not been cleared by her doctor to return to work in any capacity. On or around August 18, 2016 claimant visited her doctor. Claimant stated that her doctor granted her some type of release to return to work, but claimant was not sure what type of release it was. Claimant believed that her doctor forwarded this document to her employer, but claimant was not given a copy. Employer did not have a copy of the doctor's release as of Monday, August 22, 2016. Employer stated that they had not received requested documentation since the date when claimant's short term disability ran out.

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.

The claimant has not established the ability to work at this time. Benefits are withheld until such time as the claimant establishes the ability to work. Whereas claimant stated that her doctor had not allowed her return to work until August 18, 2016, at the earliest, claimant is not eligible to receive unemployment benefits prior to that date. Since the August 18, 2016 meeting with her doctor, claimant has not forwarded to the administrative law judge or the employer proof that she is able to return to work, with or without restrictions. Until documentation is received, claimant has not established the ability to work and benefits are withheld.

DECISION:

The decision of the representative dated August 8, 2016, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs