

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BEVERLY A BROWN**  
Claimant

**APPEAL NO. 100-UI-08434-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ELECTROLUX HOME PRODUCTS INC  
FRIGIDAIRE**  
Employer

**OC: 01/10/10**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Beverly Brown filed a timely appeal from the February 19, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 1, 2010. Ms. Brown participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge took official notice of the Employment Appeal Board decision entered on June 11, 2010 in Hearing Number 10B-UI-03234. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly report to the Agency via the automated telephonic claim reporting system.

**ISSUE:**

Whether Ms. Brown has been able to work and available for work since establishing her claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Beverly Brown was employed by Electrolux Home Products as a full-time operator from March 9, 1998 until she was fired on January 21, 2010. Ms. Brown had been off work due to medical reasons and was covered under the Family and Medical Leave Act (FMLA) and/or sickness and accident leave (S&A). The employer uses a third-party administrator, Unum Providence, who works with employees under FMLA and/or S&A. Under the Employer's policies, an employee can be fired, or assessed attendance points, if the employee fails to timely notify the company-designated administrator with all the medical professional orders or instructions, or fails to timely verify that the application form has been received. A form was sent to Ms. Brown advising that her short-term disability would expire November 1, 2009 and that Unum needed more information to determine whether Ms. Brown's absence could be covered under unpaid S&A leave. Ms. Brown did not receive the letter. Because of this, as of January 21, 2010, the employer had not received a written reply from Ms. Brown. Ms. Brown had been told by Unum to contact the employer directly, and she did so, rather than talk to Unum. The employer fired Ms. Brown in a letter dated January 21, 2010 because the employer had not received written information in

response to its letter. On June 11, 2010, the Employment Appeal Board entered a final Agency decision that held Ms. Brown had been discharged for no disqualifying reason.

Ms. Brown filed a claim for unemployment insurance benefits that was effective January 10, 2010 and received benefits for the period of January 10 through February 13, 2010. On February 19, 2010, a Workforce Development representative entered the reference 01 decision that denied benefits effective January 10, 2010, based on a conclusion that Mr. Brown was not able to work due to injury. That is the decision from which Ms. Brown has appealed.

Since Ms. Brown established her claim for benefits, she had experienced a number of different health issues. These have included ongoing problems with her leg. Ms. Brown indicates that her leg "gave out" on her. Ms. Brown's health issues also included a bout of pneumonia and several additional ailments. At the time of the appeal hearing, Ms. Brown indicated that her leg issue had not yet been resolved, that she was scheduled to go to the University of Iowa Hospitals & Clinics for evaluation and that she expected to be referred to a specialist. At the time of the hearing, Ms. Brown reported that she had to use a walker because her leg had gotten worse. Ms. Brown reported that she was able to stand with the walker. Ms. Brown reported that she was in pain.

At the time of the appeal hearing, Ms. Brown had been without the use of her car since July 2010, but expected it to be fixed in the near future.

The hearing in this matter was originally set for July 29, 2010. On that day, Ms. Brown appeared without submitting or having in her possession medical documentation regarding her work ability and availability. Ms. Brown indicated that she had been scheduled to have a doctor appointment on July 26, 2010, and expected to get documentation at that time, but had not gone to the appointment because her car had broken down. The administrative law judge agreed to postpone the hearing so that Ms. Brown could provide medical documentation regarding her work ability from the time she filed her claim. When the matter came back on for hearing on September 1, 2010, Ms. Brown again appeared without submitting or having in her possession medical documentation regarding her work ability and availability. Ms. Brown's car was still out of commission and she had not been able to travel to her doctor's office and had not taken any other steps to acquire and provide medical documentation for the hearing.

## **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".

871 IAC 24.22(1)a, (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.

(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.

(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 Administrative Code rule 871 IAC 24.23 provides in relevant part as follows:

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

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment.

24.23(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Ms. Brown has presented insufficient evidence to establish, by a preponderance of the evidence, that she has been able to work and available for work since she established her claim for benefits. The evidence indicates that Ms. Brown has consistently experienced significant health problems since she filed her claim for benefits and has been under the care of one or more physicians. Ms. Brown has failed to provide medical documentation to substantiate her ability to perform full-time work of any kind since she filed her claim. In addition, Ms. Brown has been without her primary means of transportation since July. Benefits are denied effective January 10, 2010. This disqualification continues at the time of the September 1, 2010 appeal hearing and will continue unless and until Ms. Brown provides appropriate medical documentation and otherwise proves that she is both able and available for work.

**DECISION:**

The Agency representative's February 19, 2010, reference 01, is affirmed. The claimant has not met the work ability and availability requirements of the law since she established her claim for benefits. Benefits are denied effective January 10, 2010. This disqualification continued at the time of the September 1, 2010 appeal hearing and will continue beyond that date unless and until Ms. Brown provides appropriate medical documentation and otherwise proves that she is both able and available for work.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/pjs