

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KASIMA SMAJLOVIC
Claimant

APPEAL NO. 12A-UI-11881-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**WAUKEE COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 09/02/12
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the September 26, 2012 (reference 02) decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call on October 29, 2012. Claimant participated. Employer participated through CFO Laura Appenzeller-Miller, director of nutrition Jeanie Allgood, and district nutrition supervisor Carla Anderson.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was released to return to work by physician Robert Shires, M.D. on September 28, 2012.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective September 30, 2012.

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".

871 IAC 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.

Claimant was not available for work from September 2, 2012 to September 28, 2012 because of being under medical care. As of September 28, 2012, claimant was medically released and is considered able to and available for work.

DECISION:

The September 26, 2012 (reference 02) decision is modified in favor of the appellant. The claimant is not able to work and available for work from September 2, 2012 to September 28, 2012. Claimant is able to work and available for work effective September 30, 2012 and benefits are allowed as of that date, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css