

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE R JOHNSON
Claimant

**CEDAR RAPIDS COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 16A-UI-12315-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/16/16
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

The employer filed an appeal from the November 14, 2016, (reference 05) unemployment insurance decision that allowed benefits based upon being able to and available for work. The parties were properly notified about the hearing. A telephone hearing was held on December 6, 2016. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through human resources generalist Sue Wilber and human resource specialist Aubrey Mcelmell-Balkman.

On November 14, 2016, the Benefits Bureau of IWD issued an unemployment insurance decision that denied benefits effective October 16, 2016, because of not being able to and available for work as she has not been released from medical care. The Benefits Bureau did not provide that information to the ALJ prior to the hearing.

ISSUES:

Is the claimant able to work and available for work effective October 16, 2016?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time food service manager through October 17, 2016. Her last day of work was during the prior school year that ended June 1, 2016. She provided a doctor's note dated September 26, 2016, that she was physically unable to perform her work duties indefinitely effective August 10, 2016.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective October 16, 2016.

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".

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 medical practitioner and has not been released as being able to work.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

Inasmuch as the medical condition is not work-related and the treating physician has not released the claimant to return to work with or without restriction, she has not established her ability to work effective October 16, 2016. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given her education, training and work experience, and any medical restrictions.

DECISION:

The November 14, 2016, (reference 05) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective October 16, 2016. Benefits are withheld until such time as the claimant obtains a medical release to return to work.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs