

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TANJA M RINGGENBERG**  
Claimant

**HH VENTURES LLC**  
Employer

**APPEAL 19A-UI-00223-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/16/18  
Claimant: Appellant (2)**

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Iowa Code §96.4(3) – Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 7, 2019, (reference 04) unemployment insurance decision that denied benefits based upon a determination that she was not able to work following surgery. The parties were properly notified about the hearing. A telephone hearing was held on January 25, 2019. Claimant participated and testified. Employer participated through Chief Financial Officer Scott Kokotan. Claimant's Exhibits A and B were received into evidence.

**ISSUE:**

Is the claimant able to and available for work effective December 16, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant had surgery on September 20, 2018 and was taken off work. Claimant had an appointment with her doctor on December 19, 2018 and was released to return to work with a 25 pound lifting restriction effective December 24, 2018. (Exhibit A). Claimant took her release to the employer on December 20, 2018, but was informed that her FMLA leave had expired and she had been separated from employment. Claimant returned to and has been working at her part-time job at Home Depot since December 27, 2018. (Exhibit B). Claimant was released to return to work without restriction on January 21, 2019. Claimant testified she has work experience in various positions, such as retail and food service, that falls within her work restriction. Since being released to return to work and filing for benefits claimant has been making at least two job contacts each week for positions within her restrictions.

**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 December 16, 2018.

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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced

separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant was released to return to work with a 25 pound lifting restriction effective December 24, 2018. Inasmuch as the medical condition was not work-related but employer permanently filled the job before she was released to return to work; and when the treating physician had released her to return to work no suitable, comparable work was available, claimant has established her ability to and availability for work. Furthermore, since the employment ended on December 20, 2018, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since she has performed jobs within the work history that fall within her lifting restrictions, she is considered able to work even if she cannot yet return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of December 16, 2018.

Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

**DECISION:**

The January 7, 2019, (reference 04) unemployment insurance decision is reversed. The claimant is able to work and available for work effective December 16, 2018. Benefits are allowed, provided he is otherwise eligible.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs