

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RITA H ROBINSON
Claimant

APPEAL NO. 11A-UI-00822-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/10/10
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated January 10, 2011, reference 04, which denied benefits as of August 15, 2010, finding that the claimant was not able to perform work and therefore did not meet the availability requirements of the law. After due notice was issued, a telephone hearing was held on February 22, 2011. The claimant participated personally.

ISSUE:

At issue is whether the claimant was able and available for work within the meaning of the Employment Security Law.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Rita Robinson filed a claim for unemployment insurance benefits with an effective date of January 10, 2010, and was provided the customary information that explains the unemployment compensation system and its requirements.

On or about August 15, 2010, Ms. Robinson underwent eye surgery. Because the claimant had lost her eyesight in the other eye, Ms. Robinson was not able to seek or accept employment with prospective employers for a two-week period until her recuperation.

After the conclusion of the week ending August 28, 2010, Ms. Robinson was able to have her vision restored sufficiently to seek and accept employment. The claimant actively sought employment by contacting prospective employers and by attempting to return to part-time employment.

Subsequently on January 28, 2011, Ms. Robinson developed a complication to her eye surgery and was determined by her physician to once again be not able to work until sufficient recovery takes place.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant is able to work and available for work for the period of August 28, 2010, until January 28, 2011.

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 24.23(1) provides:

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

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

871 IAC 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.

Inasmuch as the evidence in the record establishes that Ms. Robinson had sufficiently recovered from eye surgery after the conclusion of the week ending August 28, 2010, the administrative law judge concludes that the claimant was able and available for work within the meaning of the employment security law until the week beginning January 31, 2011, when the claimant's eye condition once again prevented the claimant from performing work, causing the claimant not to meet the availability requirements of the law.

The administrative law judge finds the claimant to be a credible witness and finds that her testimony is not inherently improbable. Benefits are allowed for the period of August 29, 2010, through January 28, 2011, provided the claimant meets all other eligibility requirements of Iowa law.

DECISION:

The representative's decision dated January 10, 2011, reference 04, is affirmed as modified. The claimant was not able to perform work and therefore did not meet the availability requirements of the law for the period August 15, 2010, through August 28, 2010. The claimant was able and available for work for the period of August 29, 2010, through January 27, 2011. The claimant does not meet the availability requirements of the law, because she is not able to perform work from the week beginning January 31, 2011, until the claimant's circumstances change and the claimant contacts the local workforce development center to request that her disqualification be removed.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw