

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JULIE A BARTON
Claimant

APPEAL NO. 19A-UI-06748-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 07/21/19
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 19, 2019 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 18, 2019. Claimant participated personally.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant injured her back a year ago while doing work that was not a part of her employment. Claimant never missed work as a result of this back injury. Claimant has not had restrictions issued by her doctor as to any work she cannot do as a result of her injury.

Claimant continues to be able and available to work and is actively searching for work.

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".

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 physician and has not been released as being able to work.

Inasmuch as the injury was not work-related and no treating physician has issued any work restrictions at any time, the claimant has established the ability to work. Benefits shall be allowed effective July 21, 2019.

DECISION:

The decision of the representative dated August 19, 2019, reference 02 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective July 21, 2019, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn