

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LORETTA BLACKMAN
Claimant

MASTERSON PERSONNEL INC
Employer

APPEAL 18A-UI-09774-DG-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/26/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 21, 2018, (reference 03) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on October 9, 2018. Claimant participated personally. Employer participated by Jim Robertson, Unemployment Operations Manager.

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 began working for employer on or about May 11, 2018. Claimant notified employer at the time of hire that she was not able to drive a car at night because of her vision. Employer found work for claimant and notified claimant. Claimant was able to verify that her neighbor worked at the same location, and that she could provide transportation to and from work each day.

Claimant was assigned to work at a work assignment in New Hampton, Iowa, and claimant rode with her neighbor to work each day. Claimant's assignment ended on or about August 24, 2018. Claimant reported to employer and requested more work. Employer offered her work in another location that included nighttime hours. Claimant had to decline the offer because she could not drive at night. Claimant is able to drive during the day, and she is able to work any hours in Charles City, Iowa.

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 August 26, 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. Emp't Appeal Bd.*, 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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Inasmuch as the claimant is available to work full-time hours consistent with her availability to work at the time of hire with this employer, she is able to and available for work. Benefits shall be allowed effective August 26, 2018.

DECISION:

The decision of the representative dated September 21, 2018, (reference 03) is reversed. Claimant is eligible to receive unemployment insurance benefits, effective August 26, 2018, provided claimant meets all other eligibility requirements.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn