

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

APRIL R MACPHERSON
Claimant

APPEAL NO: 18A-UI-07502-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EXPRESS SERVICES INC
Employer

**OC: 06/10/18
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

April MacPherson (claimant) appealed a representative's July 11, 2018 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was unable to work with Express Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 30, 2018. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the 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 that: The employer is a temporary agency. The claimant was assigned to work for Winnebago Industries from December 20, 2017, to June 6, 2018, as an assembler. She used her right hand to operate a power tool to tighten screws.

On June 6, 2018, the claimant broke her hand at home when she fell on her front porch. Her physician said she could continue to work with three fingers on her right, dominant, hand. Neither Winnebago Industries nor the employer could accommodate her non-work-related injury restrictions.

On July 24, 2018, her physician's assistant released the claimant to return to work without restrictions on July 25, 2018. The claimant started working for Casey's on July 29, 2018.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work.

Iowa Admin. Code r. 871-24.23(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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is medically unable to perform work, she is considered to be unavailable for work. The claimant's physician restricted her from regular duty until July 25, 2018. She is considered to be unavailable for work through July 28, 2018.

Iowa Admin. Code r. 871-24.23(23) provides:

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

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

The claimant started working for Casey's as of July 29, 2018. The claimant is disqualified from receiving unemployment insurance benefits because she was not available for other work after July 29, 2018. The claimant is disqualified from receiving unemployment insurance benefits beginning June 10, 2018, because she was not able and available for work.

DECISION:

The representative's July 11, 2018 decision (reference 02) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she was not able and available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs