

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**RENEE L LUKE**  
Claimant

**DEERE & COMPANY**  
Employer

**APPEAL 17A-UI-04796-JP**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/09/17**  
**Claimant: Appellant (1)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the April 26, 2017, (reference 02) unemployment insurance decision that denied benefits from April 9, 2017 through May 6, 2017. The parties were properly notified about the hearing. An in-person hearing was held at 3420 University Avenue, Suite A, Waterloo, Iowa on September 20, 2017. Claimant participated. Heather Sherwood observed the hearing. Employer participated through labor relations administrator Craig Cornwell. Employer Exhibits 1, 2, 3, 4, and 5 were admitted into evidence with no objection.

**ISSUE:**

Is the claimant able to work and available from April 9, 2017 through May 6, 2017?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as an assembly worker from October 2, 2000, and was separated from employment on March 24, 2017. On January 18, 2017, claimant was sent home from work due to a non-work related injury. The employer instructed claimant that she could not return to work until she provided a release from her doctor. Claimant did not return to work prior to her separation.

On January 20, 2017, claimant went to her regular doctor. Claimant was released to return to work with light duty on January 20, 2017. Claimant was also given a doctor's note excusing her from work through January 23, 2017. Claimant provided both doctor notes to the employer. Claimant's regular doctor also referred her to a specialist. On January 23, 2017, claimant met with the specialist, which referred her to a neurologist. The specialist did not modify her work restrictions. On January 30, 2017, claimant met with the neurologist in Waterloo. The neurologist excused claimant from work until she saw a specialist in Iowa City. On February 9, 2017, claimant completed a nerve test. On March 1, 2017, claimant met with a specialist in Iowa City. The specialist in Iowa City did not put claimant on any work restrictions. On March 30, 2017, the neurologist's office in Waterloo faxed paperwork to the employer that showed claimant was to return to work on February 10, 2017. Employer Exhibit 4.

On April 5, 2017, claimant obtained a doctor's note that stated she was "unable to work due to aggravation of her underlying problem." Employer Exhibit 5. Claimant's doctor "recommend[ed] this patient not return to work until [the doctor] reassess[es] her on May 4, 2017." Employer Exhibit 5. On April 6, 2017, claimant obtained a doctor's note that excused her from work from February 9, 2017 through May 4, 2017. Employer Exhibit 5. Claimant's doctor excused her from work from "March 1, 2017 through May 4, 2017 [because] she will be completing physical therapy that she needs to attend." Employer Exhibit 5. Claimant's doctor did not release her to work prior to May 4, 2017.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that claimant is not able to work and available for work from April 9, 2017 through May 6, 2017.

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)).

Inasmuch as claimant obtained two doctors notes, one dated April 5, 2017 and the other dated April 6, 2017, that did not release her to work until she was reassessed on May 4, 2017, she has not established her ability to work from April 9, 2017 through May 6, 2017. Employer Exhibit 5. Although claimant indicated she was able to work, no evidence was presented that claimant's doctor released her to work during this time period. Benefits are denied from April 9, 2017 through May 6, 2017.

**DECISION:**

The April 26, 2017, (reference 02) unemployment insurance decision is affirmed. Claimant is not able to work and available for work from April 9, 2017 through May 6, 2017. Benefits are denied from April 9, 2017 through May 6, 2017.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/rvs