

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATHLEEN A BERNING**  
Claimant

**APPEAL NO. 13A-UI-03159-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SPHERION STAFFING LLC**  
Employer

**OC: 11/25/12**  
**Claimant: Respondent (1)**

Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

Spherion Staffing, LLC filed a timely appeal from the representative's decision dated March 8, 2013, reference 02, which held the claimant eligible to receive unemployment insurance benefits effective February 3, 2013 finding that the claimant was able and available for work. After due notice, a telephone hearing was held on April 15, 2013. The claimant participated. The employer participated by Ms. Lynda Wunder, Branch Manager.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds: Kathleen Berning was most recently employer by Spherion Staffing, LLC from December 11, 2012 until January 14, 2013 when her assignment was ended by the client. Ms. Berning had been assigned to work as a clerical worker/date entry worker for The Greater Fort Dodge Alliance at the rate of \$12.00 per hour.

Ms. Berning had called in sick on January 10, 2013 causing the client to end her assignment earlier than previously expected. At the time that Ms. Berning was informed that the assignment was ending, she inquired as to whether additional assignments were available and was told that there were not any assignments available at that time.

Later on February 8, 2013, Ms. Berning visited the Spherion Staffing offices after returning from a doctor's office visit. The claimant's intention was to communicate to the temporary staffing company that she would be unable to do data entry work for a period of time due to carpal tunnel syndrome. The claimant, however, was looking for other types of work. Ms. Berning further stated at that time that she expected to undergo carpal tunnel surgery on March 25, 2013 and would not be available for work for three weeks thereafter during her recovery period. The employer understood the claimant's remarks to indicate that the claimant was not available

or able to work as of February 8, 2013. During the conversation on February 8 the claimant also had made reference to her calling in sick on January 10, 2013 and stated that she had been "ill with the flu for one and one-half weeks" after the January 10, 2013 call in.

Based upon the employer's understanding of the claimant's statements, Spherion Staffing, LLC considered that the claimant was not available for work and ineligible to receive unemployment insurance benefits for one and one-half weeks after January 10, 2013 and that the claimant was not able and available for work from February 8, 2013 until April 15, 2013.

#### **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".

In this matter the evidence establishes that Ms. Berning called in ill on January 10, 2013 and that the client employer chose to end the claimant's assignment early. The evidence establishes that Ms. Berning was in contact with Spherion Staffing to inform the employer of her availability for work within three days of the end of her assignment with The Greater Fort Dodge Alliance. Based upon the claimant's later statements the employer concluded that Ms. Berning was not able and thus available for work for one and one-half weeks after that date. A review of the claimant's benefit payment history shows that Ms. Berning did not claim or receive unemployment insurance benefits during this time and therefore is not required to be able and available for work during a period of time that she was not claiming benefits.

The administrative law judge concludes based upon the evidence in the record that Ms. Berning's intention on February 8, 2013 was not to inform the employer that she was not able or available for work from February 8, 2013 through April 15, 2013. The claimant was merely informing the employer that she could not do a typical type of work due to her carpal tunnel but that she was available for other work. The evidence also establishes that Ms. Berning later elected not to have carpal tunnel surgery but to have an alternate treatment that did not affect her ability or availability for work.

For the reasons stated herein the administrative law judge concludes that the claimant has established that she is able and available for work effective February 3, 2013 and that she did not claim unemployment insurance benefits during an earlier period when she was not able to work.

**DECISION:**

The representative's decision dated March 8, 2013, reference 02, is affirmed. The claimant is able and available for work effective February 3, 2013 and is eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of the law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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