

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLE BOONE
Claimant

APPEAL 17A-UI-12687-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARROLLTON CITY SCHOOLS
Employer

**OC: 11/19/17
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the December 5, 2017, (reference 03) unemployment insurance decision that denied benefits based on inability to work due to injury. The parties were properly notified of the hearing. A telephone hearing was held on January 2, 2018. The claimant participated and testified. The employer did not participate. Claimant's Exhibit A was received into evidence.

ISSUE:

Is the claimant able to work and available for work effective November 19, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as a bus driver from May 2017, until this employment ended on November 2, 2017, when she was discharged following an injury that temporarily prevented her from working. Claimant suffered a non-work related injury and was restricted from working by her doctor towards the end of October. Claimant was released to return to work without restriction on November 20, 2017. (Exhibit A). Claimant has no other restrictions on her ability to or availability for work and has been conducting at least two weekly job searches.

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 November 19, 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.

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.

Since the employment ended on November 2, 2017, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Inasmuch as the treating physician had released claimant to return to work without restriction effective November 20, 2017 and she has no other restrictions on her ability to or availability for work, claimant is able to and available for work. Benefits are allowed, provided claimant is otherwise eligible.

Claimant is on notice that she must continue to conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

DECISION:

The December 5, 2017, (reference 03) unemployment insurance decision is reversed. The claimant is able to work and available for work effective November 19, 2017. Benefits are allowed, provided she is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs