

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CARLA SCHILLINGER**  
Claimant

**APPEAL NO: 11A-UI-04810-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COUNTRY INN SUITES**  
Employer

**OC: 09/26/10**  
**Claimant: Appellant (4)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Carla Schillinger (claimant) appealed an unemployment insurance decision dated April 8, 2011, reference 03, which held that she was not eligible for unemployment insurance benefits because she was not medically available to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 18, 2011. The claimant participated in the hearing. The employer participated through Michael Van Acker. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is able and available to work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time night auditor on April 20, 2003. She was taken off work and admitted to the hospital from December 5, 2010 through December 17, 2010. The claimant had non-work-related restrictions from December 18, 2010 through December 28, 2010. She returned to work on December 28, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work.

Iowa Code § 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,

*<http://www.iowaworkforce.org/ui/appeals/index.html>*

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".

871 IAC 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 her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She was in the hospital for two weeks and was on non-work-related restrictions for the third week. The claimant does meet the availability requirements of the law for the three-week period ending December 25, 2010 and benefits are denied for that same time frame.

**DECISION:**

The unemployment insurance decision dated April 8, 2011, reference 03, is modified in favor of the appellant. The claimant was not able and available to work from December 5, 2010 through December 25, 2010. She does not qualify for benefits for that same three-week period.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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