

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KIMBERLY K KRAMER
Claimant

HY-VEE INC
Employer

APPEAL 17A-UI-06718-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/07/17
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

Kimberly K. Kramer (claimant) filed an appeal from the June 19, 2017, reference 01, unemployment insurance decision that denied benefits for the one-week period ending May 13, 2017, based upon the determination she was under the care of a doctor and had not been released to work. The parties were properly notified about the hearing. A telephone hearing was held on July 19, 2017. The claimant participated. Gwen Fowler, the claimant's sister, participated on her behalf. The employer participated through Human Resource Manager Keely McDonald and was represented by Keith Mokler of Corporate Cost Control. Claimant's Exhibit A was received.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed part-time as a Clerk beginning on October 2, 2016. She works between 20 and 25 hours a week, but was never guaranteed a certain number of hours when she was hired. She is still employed in her position.

On March 27, 2017, the claimant needed time off work due to a medical issue. On Tuesday, May 2, 2017, her doctor released her back to work with a 40-pound lifting restriction. (Claimant's Exhibit A.) The claimant delivered her doctor's note to the Store Director the same day.

The employer makes its weekly schedules on Mondays which get posted for the employees to see on Fridays. When the claimant delivered her note, the employer had already created its schedule for the week that began May 7, 2017. The claimant was not scheduled for that week as the schedule had already been created. The claimant returned to work effective May 14, 2017 and worked 20.22 hours her first week back. She worked 23.57 hours the following week.

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 May 7, 2017. Benefits are allowed, provided she is otherwise eligible.

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). The claimant was released by her doctor to return to work on May 2, 2017 and could perform work that was part of her normal job. There were no other issues

preventing the claimant from working. The claimant was able to and available for work. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The June 19, 2017, reference 01, unemployment insurance decision is reversed. The claimant is able to work and available for work effective May 7, 2017. Benefits are allowed, provided she is otherwise eligible.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn