

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DOMINIQUE C CULLOM
Claimant

LONGHOUSE NORTSHIRE LTD
Employer

APPEAL 21A-UI-17155-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/21/20
Claimant: Appellant (3)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from the July 30, 2021 (reference 09) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 28, 2021, at 11:00 a.m. Claimant participated. Employer participated through Rosemary Hibbs, Administrator. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether claimant is able to and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed as a PRN Certified Nurse Assistant with Longhouse Northshire. Claimant injured her back on April 1, 2021. The injury made claimant unable to walk. Claimant sought medical attention and was diagnosed with a slipped disc.

On April 7, 2021, claimant's physician restricted her from working due to the injury.

On June 7, 2021, claimant's physician released claimant to return to work with restrictions. Employer contacted claimant about returning to work. Employer was willing to accommodate claimant's restrictions. Claimant did not return to work.

On July 7, 2021, claimant's physician modified claimant's restrictions. Employer contacted claimant again about returning to work and was willing to accommodate claimant's restrictions. Claimant did not return to work.

On August 3, 2021, claimant's physician modified claimant's restrictions. Claimant returned to work for employer on August 6, 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant was not able to or available for work. Benefits are denied.

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) 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. 871-24.22(2) provides:

Benefit 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

Inasmuch as the injury was work-related, claimant's physician had not released claimant to return to work with or without restrictions from April 1, 2021 through June 6, 2021. Therefore, claimant was not able to or available for work.

Claimant's physician released claimant to return to work with restrictions effective June 7, 2021. Employer was willing to accommodate those restrictions. Yet, claimant did not return to work. Therefore, claimant was not able to or available for work.

Claimant has not established that she was able to and available for work. Accordingly, benefits are denied effective March 28, 2021.

DECISION:

The July 30, 2021 (reference 09) unemployment insurance decision is modified in favor of respondent. Claimant was not able to or available for work effective March 28, 2021. Benefits are denied.



Adrienne C. Williamson
Administrative Law Judge
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October 1, 2021
Decision Dated and Mailed

acw/mh