

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA A HEADINGTON
Claimant

ALDI INC
Employer

APPEAL 18A-UI-04386-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

The claimant filed an appeal from the April 4, 2018, (reference 02) unemployment insurance decision that denied benefits as of March 4, 2018. The parties were properly notified about the hearing. A telephone hearing was held on May 3, 2018. Claimant participated. Attorney Richard Schmidt participated on behalf of claimant. Employer did not register for the hearing and did not participate. Official notice was taken of the administrative record with no objection.

ISSUE:

Is the claimant able to work and available for work effective March 4, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The last day claimant performed work for the employer was on June 28, 2017 due to a worked related injury because of repetitive use of her elbow. On June 28, 2017, claimant filed a work comp claim with the employer. On June 28, 2017, claimant went to the employer's work comp doctor. The work comp doctor placed claimant on work restrictions (no pushing or pulling more than five pounds). Claimant's normal job duties required claimant to be able to push and pull more than five pounds. Claimant provided the employer her doctor's note around June 28, 2017, but the employer was not able to accommodate her work restrictions. Claimant's injury was determined to be work related. Claimant had follow-up appointments with doctors, but her work restrictions remained the same.

Around November 10, 2017, claimant went back to the work comp doctor. The work comp doctor gave claimant updated work restrictions (no pushing or pulling more than fifteen pounds). The updated work restrictions were provided to the employer, but they were not able to accommodate her updated work restrictions. Claimant's normal job duties required claimant to be able to push and pull more than fifteen pounds. Claimant's work comp benefits expired December 27, 2017.

On January 2, 2018, claimant's doctor issued a report that was back dated and released her to return to work as of November 27, 2017, with no restrictions. The doctor gave claimant a 0%

impairment rating. The employer's attorney provided claimant's attorney the doctor's report on January 22, 2018, which was the first time claimant received the report. Claimant offered to return to work for the employer through her attorney, but the employer did not call her back. Claimant also reached out to the employer between January 2018 and March 2018 about returning to work, but they would not allow her to return to work.

Around March 9, 2018, claimant opened a claim for unemployment insurance benefits with an effective date of March 4, 2018. Claimant is able to work with no restrictions according to the doctor. Claimant does not have any work restrictions as of the January 2, 2018 report. Claimant has made at least two employer contacts each week she has filed a claim for benefits. Claimant testified she is able to and available for work. Claimant's past work history includes sales and waitressing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work effective March 4, 2018. Benefits are allowed effective March 4, 2018.

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. 871-24.22(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.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22. 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).

On January 2, 2018, the work comp doctor issued a report releasing claimant to return to work with no restrictions as of November 27, 2017. Prior to March 2018, claimant contacted the employer about returning to work, but the employer refused to let her return to work. Around March 9, 2018, claimant opened her claim for benefits with an effective date of March 4, 2018. Claimant has made at least two employer contacts each week she has filed a weekly continued claim for benefits. Claimant has been able to and available for work since she was released to return to work with no restrictions. Inasmuch as the medical condition was work-related and the treating physician has released the claimant to return to work as of November 27, 2017 with no restrictions, she has established her ability to work. Benefits are allowed effective March 4, 2018.

DECISION:

The April 4, 2018, (reference 02) unemployment insurance decision is reversed. Claimant is able to work and available for work effective March 4, 2018. Benefits are allowed, provided she is otherwise eligible. Any benefits claimed and withheld on this basis shall be paid.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/scn