

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TERESA M JOHNSON
Claimant

APPEAL 19A-UI-08494-AD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONTEMPORARY CONCEPTS INC
Employer

OC: 09/29/19
Claimant: Appellant (2)

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

STATEMENT OF THE CASE:

Teresa Johnson (claimant) filed a timely appeal from the October 22, 2019 (reference 03) decision that determined she was ineligible to receive unemployment insurance benefits from September 29, 2019 through October 19, 2019, due to being under the care of a doctor and not being released to work during that time.

A telephone hearing was held on November 20, 2019, at 1 p.m. The parties were properly notified of the hearing. Claimant participated personally. Contemporary Concepts, Inc. (employer) did not register for the hearing or participate.

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:

Claimant was employed with employer as a full-time sales representative beginning on May 13, 2019. The last day she worked on the job was June 24, 2019. She was discharged on September 16, 2019.

Claimant tore the meniscus in her knee while working for employer on June 24, 2019. She saw her doctor two days later and learned of the extent of the injury. She was unable to work for employer from that time until she was discharged. She had a surgical procedure to repair the torn meniscus on August 21. Her surgeon released her to return to work with no restrictions on September 24, 2019. Some activities may have caused swelling of her knee at that point, but she would have been able to return to her sales job and could perform daily activities such as walking, standing, sitting, and driving.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the October 22, 2019 decision is REVERSED. The administrative law judge concludes that the claimant was able to work effective September 24, 2019.

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, 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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as claimant's medical condition was work-related and the treating physician released the claimant to return to work with no restrictions as of September 24, 2019, she has established her ability to work during the period of time for which she was determined to be ineligible.

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

DECISION:

The October 22, 2019 (reference 03) decision that determined claimant was ineligible to receive unemployment insurance benefits from September 29, 2019 through October 19, 2019, due to being under the care of a doctor and not being released to work during that time, is REVERSED. The claimant was able to work effective September 24, 2019. Benefits are allowed, provided claimant is otherwise eligible.

Andrew B. Duffelmeyer
Administrative Law Judge

Decision Dated and Mailed

abd/scn