

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA STEPHEN
Claimant

APPEAL NO: 09A-UI-03735-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SAMARITAN SOCIETY INC
Employer

OC: 01/18/09
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Donna Stephen (claimant) appealed an unemployment insurance decision dated March 5, 2009, reference 02, which held that she was not able to perform work due to surgery. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 2, 2009. The claimant participated in the hearing. The employer participated through Amanda Blocker, Administrator and Joani Blenner, Payroll. Employer's Exhibits One through Three were admitted into evidence. 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 part-time registered nurse on December 5, 2006. She went on a non-work-related medical leave on January 5, 2009 and had surgery on February 19, 2009. The claimant was released to return to work On February 23, 2009 with a 20 pound lifting restriction and released without restriction on April 2, 2009. She has not returned to work without restrictions.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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".

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 had surgery for a non-work-related medical condition on February 19, 2009 and was not able to work. The claimant does not meet the availability requirements of the law and benefits are denied as of February 15, 2009.

DECISION:

The unemployment insurance decision dated March 5, 2009, reference 02, is affirmed. The claimant is not eligible for unemployment insurance benefits as of February 15, 2009.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css