

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MOLLY KNOSPE
Claimant

APPEAL 22A-UI-11713-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'REILLY AUTOMOTIVE INC
Employer

**OC: 11/21/21
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the April 29, 2022 (reference 04) unemployment insurance decision that found claimant was not eligible for unemployment benefits effective November 21, 2021 due to her not being able to and available for work. Due notice of the hearing was issued. A telephone hearing was held on June 21, 2022. The claimant participated personally. The employer participated through witness Mark Lellig. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Was the claimant able to and available for work effective November 21, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant had worked full-time for the employer beginning September 23, 2020 through November 26, 2021 as a merchandising specialist. Claimant suffers from a shoulder injury which caused her problems being able to perform her job duties for this employer. There were times when she could not lift above her head. She sought treatment for the shoulder and was prescribed to start physical therapy but she did not do so because her employment ended and she was unable to afford the therapy. Claimant also suffers from anxiety, which causes dizziness. Claimant believes that this anxiety is triggered by working full-time and interferes with any full-time working position she may obtain. Claimant did not actively seek work making at least four job contacts each week for the period of time between November 21, 2021 and March 2, 2022 when she started working at Wal-Mart in a full-time position. She separated from Wal-Mart in approximately April of 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to work. Unemployment insurance benefits funded by the State of Iowa are denied effective

November 21, 2021 and continuing until the claimant establishes that she is able to and available for full-time work.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.23(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.

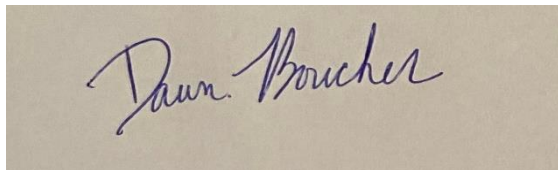
To be able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken 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)).

The burden is on the claimant to establish that she is able to work and available for work within the meaning of the statute. Iowa Code § 96.6(2); Iowa Admin. Code r. 871-24.22. Because the claimant credibly testified that her anxiety interferes with any full-time employment she may obtain, she is not considered able to and available for full-time work. As such, regular unemployment insurance benefits funded by the State of Iowa are denied effective November 21, 2021 (her original claim date) and continuing thereafter until it is established that she is able to and available for full-time work.

DECISION:

The April 29, 2022 (reference 04) unemployment insurance decision is affirmed. The claimant was not able to work effective November 21, 2021, and continuing thereafter. Unemployment insurance benefits are denied effective November 21, 2021 and continuing until the claimant establishes that she is able to and available for full-time work.



Dawn Boucher
Administrative Law Judge

June 24, 2022
Decision Dated and Mailed

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