

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DAWN M SPELMAN-HITCHCOCK**  
Claimant

**APPEAL 18A-UI-10232-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/16/18  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

Dawn M. Spelman-Hitchcock (claimant) filed an appeal from the October 5, 2018, reference 01, unemployment insurance decision that denied benefits based upon the determination she is not able to and available for work effective September 16, 2018 due to injury. After due notice was issued, a telephone conference hearing was held on October 26, 2018. The claimant participated. The Claimant's Exhibits A and B were admitted into the record.

**ISSUE:**

Was the claimant able to work, available for work, and actively and earnestly seeking work effective September 16, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits effective September 16, 2018 following her separation from employment as a Medical Transcriptionist. The claimant has worked for the last 26 years as a Medical Transcriptionist in an office setting which did not require heavy lifting. She also has prior experience in retail or sales, management, and the food industry.

On September 13, 2018, the claimant applied for a position with Hy-Vee Warehouse, a position which requires heavy lifting. That same day, she injured her back while lifting a 40-pound bag of rock salt. The claimant saw her doctor who placed her on a ten-pound lifting restriction. The claimant also applied for jobs as a patient representative or scheduler in a medical office and a cashier at a local coffee shop that same week. The claimant has continued to apply for positions in office and retail settings for jobs that do not require lifting more than ten pounds. The claimant's doctor intends to lift her restrictions in the near future.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work, available for work, and actively and earnestly seeking work effective September 16, 2018. Benefits are allowed.

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 provides, in relevant part:

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.

...

(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.

a. Shift restriction. The individual does not have to be available for a particular shift. If an individual is available for work on the same basis on which the individual's wage credits were earned and if after considering the restrictions as to hours of work, etc., imposed by the individual there exists a reasonable expectation of securing employment, then the individual meets the requirement of being available for work.

Iowa Admin. Code r. 871-24.23 provides, in relevant part:

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.

...

(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. In this case, the claimant was injured but has been released to work with restrictions by her doctor. The claimant's prior job experience indicates there are jobs for which she is qualified that are within those restrictions and she has provided documentation she is applying for positions that are within her restrictions. The claimant is considered able to and available for work. Accordingly, benefits are allowed.

**DECISION:**

The October 5, 2018, reference 01, unemployment insurance decision is reversed. The claimant is able to work and available for work effective September 16, 2018. Benefits are allowed.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

src/scn