

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**NANCY S HINK**  
Claimant

**APPEAL NO: 18A-UI-06986-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**NCS PEARSON INC**  
Employer

**OC: 05/27/18  
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Nancy Hink (claimant) appealed a representative's June 22, 2018 decision (reference 02) that concluded she was not eligible to receive unemployment insurance benefits because she was not available to work with NCS Pearson (employer) after May 27, 2018. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for July 17, 2018. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibit A was received into evidence.

**ISSUE:**

The issue is whether the claimant is able and available for 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 worked for the employer off and on from February 2017, to May 3, 2018, as a full-time seasonal labor.

The claimant was in a motor vehicle accident on May 3, 2018. The claimant's physician released her to return to work after May 13, 2018. She returned to work on May 21, 2018. The employer did not have work again for the claimant until approximately June 27 and 28, 2018. She worked those days. The claimant filed for unemployment insurance benefits with an effective date of May 27, 2018.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is available for work as of May 27, 2018.

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.

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). When an employee is ill and unable to perform work due to that illness, she is considered to be unavailable for work. The claimant's physician released her to return to work after May 13, 2018. Therefore, she is considered to be available for work as of May 27, 2018, when she filed for unemployment insurance benefits because her physician stated she was able and available for work. Benefits are allowed as of May 27, 2018, provided the claimant is otherwise eligible.

**DECISION:**

The representative's June 22, 2018, decision (reference 02) is reversed. The claimant is considered to be available for work as of May 27, 2018. Benefits are allowed as of May 27, 2018, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs