

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MERILEE A WITHERS
Claimant

APPEAL NO. 13A-UI-08423-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COLFAX-MINGO COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 06/09/13
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the July 9, 2013, (reference 01) unemployment insurance decision that denied benefits. After due notice was issued, an in-person hearing was held on October 1, 2013 at Des Moines, Iowa. Claimant participated and was represented by Dustin Mueller, Attorney at Law. Employer participated through (representative) Marty Lucas, Superintendent of Schools; Todd Jones, High School Principal; and Debra Hodgeson, Board Secretary. Employer's Exhibits One through Nineteen were entered and received into the record.

ISSUE:

Was 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 full time as a custodian beginning in July 2007. The claimant's eventual separation from the employer is not at issue in this case.

In an at-home injury the claimant broke her big toe on May 28. She was off work per her orthopedic surgeons instructions until June 10, 2013 when she attempted to return to work. She worked only three hours that day and then had to leave. The claimant was wearing a boot on her foot and had to use a crutch to move around. She had work restrictions at that time the employer was either unwilling or unable to accommodate. An employer is not required to provide accommodations for non-work-related illness or injury. The claimant's subsequent medical release from her treating physician makes clear that from the time of her injury the claimant was "unable to work until 08/05/2013." Employer's Exhibit 19.

The claimant returned to work on August 6, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from May 28, 2013 through August 5, 2013.

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 24.22(2) 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.

(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.

An employer is not required to accommodate any restrictions that arise from a non-work-related illness or injury. The claimant's own physician indicated she was not able to work at all until August 5, 2013. Accordingly, benefits are denied.

DECISION:

The July 9, 2013, (reference 01) decision is affirmed. The claimant is not able to work and available for work effective May 28, 2013 through August 5, 2013. Benefits are denied.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css