

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH M DAVIS
Claimant

CBOCS INC
Employer

APPEAL 17R-UI-03744-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/22/17
Claimant: Appellant (1R)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the February 13, 2017, (reference 01) unemployment insurance decision that denied benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A telephone hearing was held on May 1, 2017. Claimant participated. Employer participated through general manager Mark Kurth. Claimant's Exhibit A was received.

ISSUE:

Is the claimant able to work and available for work effective January 22, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant originally worked for employer as a full-time server. On November 8, 2016, claimant requested to become a part-time employee as she obtained full-time employment elsewhere. In December 2016, claimant asked employer to temporarily take her off the schedule as she was very busy with her full-time employment. December 10, 2016, was the last day claimant worked for employer as a server.

On January 6, 2017, claimant sprained her ankle at her full-time place of employment. On January 20, 2017, claimant lost her full-time employment. In February 2017, claimant's doctor issued her restrictions requiring her to rest her ankle for 30 minutes every hour. Claimant spoke to employer about returning to work, but employer indicated it could not accommodate claimant's restrictions.

Employer has a policy of terminating employees who have not worked for the company during 30 consecutive days. In February 2017, employer brought claimant in to work on computers for one hour so she would not be terminated.

On March 8, 2017, claimant started other full-time employment. On March 14, 2017, claimant was released to return to work with no restrictions.

During sometime in March or April 2017, claimant's employment ended because she had not worked for employer during the previous 30 days. There has been no initial determination from the agency on whether this separation disqualifies claimant from receiving benefits.

Claimant does not have qualifying wages from any other employer in her base period.

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 effective January 22, 2017.

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".

Iowa Admin. Code r. 871-24.23(16) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

Iowa Admin. Code r. 871-24.22(1)a 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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(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.

The reason claimant initially was not working full-time hours for employer was because claimant limited her own hours of work. Later, claimant was not able to work full-time hours for employer due to a medical condition that was not related to this employer. The treating physician had not released the claimant to return to work without restriction, so she has not established her ability to work while still an employee of employer effective January 22, 2017, through March 14, 2017. While she may have been able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition. Thus, claimant is not considered able to or available for work during that time period for purposes of unemployment law.

Effective March 8, 2017, claimant obtained other full-time employment.

Iowa Admin. Code r. 871-24.23(23) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

Thus claimant is considered not able to or available for work even after she was released with no restrictions on March 14 as she was then connected to the labor market to such a degree she was no longer considered unemployed.

DECISION:

The representative's decision dated February 13, 2017, (reference 01) is affirmed. The claimant is not able to work and available for work effective January 22, 2017.

REMAND:

The issue of whether claimant's separation from this employer disqualifies the claimant from receiving benefits is remanded to the Benefits Bureau of the Iowa Workforce Development for an initial investigation and determination.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/rvs