

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TENESHA DIEKMAN
Claimant

APPEAL NO: 13A-UI-08864-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 06/30/13
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 26, 2013, (reference 02), decision that denied benefits from June 30 through July 27, 2013, because of not being able to perform work. After due notice was issued, a telephone conference hearing was scheduled to be held on September 6, 2013. Claimant participated. Claimant's Exhibit A was received.

ISSUE:

Is 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: The claimant had a non-work-related injury that required an extender tendon repair on June 24, 2013. Her employment history included health care and sanitation work. She was hired as a flagger on August 16, 2013. She was allowed to work with no use of the right hand from June 24 through August 5, 2013. (Claimant's Exhibit A) She was then released to full duty without restriction.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is not able to work and available for work for the period from June 30, 2013, through August 3, 2013; but is available for work effective August 4, 2013.

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".

871 IAC 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.

871 IAC 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 physician and has not been released as being able to work.

Inasmuch as the medical condition would limit the use of her right hand, given her work history and experience, she would not be able to perform those duties or similar duties, she was not considered able to or available for work through August 3, 2013. However, since claimant was released without restriction on August 5, 2013, she is considered eligible for benefits effective August 4, 2013.

DECISION:

The representative's decision dated July 26, 2013, (reference 02) is modified in favor of the appellant. Claimant is not able to work and available for work for the period from June 30, 2013, through August 3, 2013; but benefits are allowed effective August 4, 2013.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs