

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA L CHRISTOPHEL
Claimant

APPEAL NO. 08A-UI-07817-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SIGNATURE PROPERTIES/ESTHERVILLE
ROSEWOOD MANOR**
Employer

OC: 08-03-08 R: 01
Claimant: Appellant (2R)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 27, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 16, 2008. The claimant did participate. The employer did participate through Dena Howard, Director of Nursing and (representative) Lisa Lowe, Administrator. Claimant's Exhibit A was received.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant worked as a CNA which required her to provide direct care to residents. She suffered a work-related injury to her shoulder on April 6, 2008. She received medical treatment and modified duty provided by the employer's physicians. She continued to work with her shoulder injury. The claimant learned she was pregnant and received lifting restrictions from her physician. The claimant suffers from epilepsy and was taking anti-seizure medication until she found out she was pregnant. After stopping her anti-seizure medication the claimant suffered epileptic seizures at work. She was separated from her employment according to her due to her epilepsy. The claimant has no work restrictions due to her epilepsy. She is able to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective July 29, 2008.

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(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 was not work-related and the treating physician has released the claimant to return to work, the claimant has established ability to work. Inasmuch as the treating physician had released claimant to return to work without restriction effective July 29, 2008 and no suitable, comparable work was available, claimant is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND:

The separation issue delineated in the findings of fact is remanded for an initial review and determination.

DECISION:

The representative's decision dated August 27, 2008, reference 01, is reversed. The claimant is able to work and available for work effective July 29, 2008. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs