

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**YURIDIA FERNANDEZ**

Claimant

**QPS EMPLOYMENT GROUP INC**

Employer

**APPEAL 20A-UI-15732-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**

**Claimant: Appellant (1R)**

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Yuridia Fernandez (claimant) appealed a representative's November 20, 2020, decision (reference 01) that concluded ineligibility to receive unemployment insurance benefits because she was injured and unable to work with QPS Employment Group (employer) as of March 22, 2020. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2021, and February 4, 2021. The claimant participated personally through Interpreters Tania and Luciana. The employer participated by Jennifer Yang Unemployment Coordinator; Mai Lor, Unemployment Specialist; and Janine Morazan, Recruiter.

The employer offered and Exhibits One through Seven were received into evidence. The administrative law judge took official notice of the administrative record.

**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 employer is a temporary agency. The claimant has worked for the employer off and on since July 12, 2012.

She was assigned to work for Lineage Logistics starting on August 20, 2019. On November 26, 2021, she suffered a work injury. The claimant worked until February 3, 2020, with restrictions. She had surgery on February 5, 2020. On February 17, 2020, the physician returned her to work with restrictions. The claimant did not wish to perform the office work that the employer offered. On March 9, 2020, and April 16, 2020, the physician issued the claimant releases to return to work with restrictions. The claimant did not return to the employer for work.

The physician released the claimant to work without restrictions on June 12, 2020. At that time, the claimant contacted a supervisor at Lineage Logistics. It did not have work for the claimant.

The employer had work available for the claimant on June 12, 2020 but the claimant did not contact and return to the employer on June 12, 2020. The claimant did not return to work with the employer until July 23, 2020. The claimant received workers' compensation benefits from February 2020, through July 2020.

The claimant filed for unemployment insurance benefits in June 2020, but an agency worker backdated her claim to an effective date of March 22, 2020. Her weekly benefit amount was determined to be \$220.00. Benefits were paid into a bank account number that the claimant provided. The claimant received benefits of \$220.00 per week from March 22, 2020, to the week ending July 4, 2020. This is a total of \$3,300.00 in state unemployment insurance benefits after the separation from employment. She also received \$8,400.00 in Federal Pandemic Unemployment Compensation for the fourteen-week period ending July 4, 2020. The claimant did not report her receipt of workers' compensation benefits.

The claimant asserts that she received no unemployment insurance benefits. She told a worker that her bank account shows no benefits. The worker told her to file a fraud claim if she did not receive the benefits. The claimant has not filed a fraud claim.

### **REASONING AND CONCLUSIONS OF LAW:**

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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. 871-24.22(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(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.

(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.

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 employees are unable to perform work due to a medical condition, they are considered to be unavailable for work. The claimant was released to return to work with and without restrictions by the physician. She was medically able to return to work but she refused work.

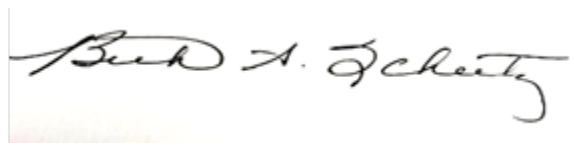
A worker is considered to be unavailable for work when she limits her working hours for a particular reason. In this case, the claimant limited her hours because she did not want to work in the employer's office and, later she only wanted to work at Lineage Logistics. Limiting working hours made the claimant unavailable for work as of March 22, 2020. Benefits are denied as of March 22, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

**DECISION:**

The representative's November 20, 2020 decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because she was not able and available for work as of March 22, 2020.

The issue of whether claimant has been overpaid unemployment insurance benefits and Federal Pandemic Unemployment Compensation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



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Beth A. Scheetz  
Administrative Law Judge

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February 17, 2021  
Decision Dated and Mailed

bas/kmj