

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KAROLINE E WILLIAMS**  
Claimant

**APPEAL NO. 07A-UI-07763-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAMILY VIDEO MOVIE CLUB INC**  
**FAMILY VIDEO**  
Employer

**OC: 07/08/07 R: 02**  
**Claimant: Appellant (1-R)**

Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Karoline Williams filed a timely appeal from the August 9, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 29, 2007. Ms. Williams participated. Veronica Duda, Human Resources Representative, represented the employer. Exhibits A, B, C and D were received into evidence.

**ISSUE:**

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant is still employed by Family Video in a part-time job at the same hours and wages.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Karoline Williams commenced her part-time employment at Family Video on January 16, 2007 and continued to work as a part-time associate until March 29, 2007, when she underwent non-work-related hip surgery and commenced an approved leave of absence. Prior to the leave of absence, Ms. Williams had worked 25 to 30 hours per week. Ms. Williams' immediate supervisor was Manager Kristy Shelton. Prior to the hip surgery, Ms. Williams' duties included checking out movies, retrieving movies from the drop box, sweeping, mopping, and vacuuming. Ms. Williams would work from 4:00 p.m. or 6:00 p.m. until midnight and worked four or five shifts per week.

Ms. Williams was scheduled to return to the employment on June 16, 2007, but called in an absence for that shift. Ms. Williams presented Ms. Shelton with one or more medical restriction documents from Dr. Todd McKinley, M.D. One such document indicated the Ms. Williams had been seen on May 25, 2007 and that she was unable to do any kneeling or bending over at work for 6 to 12 weeks. Another document, dated June 4, 2007, indicated that Ms. Williams could return to work on June 15, 2007. Ms. Williams was unable to perform most of her prior duties. However, Ms. Williams could still check out movies to customers. Ms. Williams asked Ms. Shelton only to schedule her for one-hour shifts. Because Ms. Williams was unable to perform many of her prior duties, Ms. Williams asked Ms. Shelton not to schedule her to work alone. Ms. Shelton scheduled Ms. Williams to work

two hour shifts. For the first three weeks, Ms. Williams requested, and was scheduled for, one shift per week. Ms. Williams requested not to be scheduled to work on July 5. Ms. Williams then requested that Ms. Shelton allow her to gradually increase the length of her shifts. In response to this request, Ms. Shelton scheduled Ms. Williams for a three-hour shift. Ms. Williams provided the Shelton with a medical excuse, dated July 10, 2007, that indicated as follows:

Pt. underwent a major surgical procedure to correct her hip dysplasia. The healing and rehab period can be long and difficult. Please allow her a 10 min. break every 2 hours during working hours.

Ms. Shelton was unwilling to provide Ms. Williams with a 10-minute paid break every two hours and continued Ms. Williams on two-hour shifts. Ms. Shelton indicated that she was willing to provide Ms. Williams with a 15-minute unpaid break every two hours, but this was unacceptable to Ms. Williams. Though Ms. Shelton was working reduced hours, she called an absence on July 15, 2007. Ms. Williams continued to give away her weekend shift in the weeks that followed.

On July 17, 2007, Ms. Shelton gave Ms. Williams a performance evaluation. Ms. Shelton advised Ms. Williams that she had documented an "average" score for the duties Ms. Williams was unable to perform because of her surgery and recovery. This was upsetting to Ms. Williams.

Ms. Williams failed to appear for an August 10 meeting. Ms. Williams had also requested to be off work August 12, 14 and 20.

Ms. Williams asserts that she was discharged from the employment on August 22, 2007. However, Ms. Williams applied for unemployment insurance benefits during the week that began July 8, 2007.

Ms. Williams is scheduled to undergo a second hip surgery on September 27, 2007.

#### **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 96.19, 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.

The greater weight of the evidence in the record indicates that Ms. Williams has continued under the care of a physician since her March 29, 2007 non-work-related hip surgery. The weight of the evidence indicates that Ms. Williams was on an approved leave of absence from March 29 until July 16, 2007. The weight of the evidence indicates that Ms. Williams' ability to perform work has been significantly limited by her health condition. The weight of the evidence indicates that even though Ms. Williams was released to return to work with medical restrictions, that these medical restrictions prevented Ms. Williams from performing the bulk of her work duties and made Ms. Williams' request for additional work hours unreasonable. Ms. Williams' conduct in calling in absences, giving away shifts, and/or requesting time off in connection with the very limited hours she was working upon her "release" to return to work indicate that Ms. Williams was not in fact able to return to work when she attempted to do so. The weight of the evidence also indicates that Ms. Williams has been unable to work as a general principle.

Based on the evidence in the record and the applicable law, the administrative law judge concludes that Ms. Williams has not been able to perform work and has not been available for work since she established her claim for unemployment insurance benefits. Accordingly, Ms. Williams is ineligible for unemployment insurance benefits effective July 8, 2007.

Ms. Williams' testimony at the hearing suggests that there was a separation from the employment on or about August 22, 2007. Accordingly, this matter will be remanded to a claims representative so that the impact of the separation on Ms. Williams' eligibility for benefits may be determined.

**DECISION:**

The Agency representative's August 9, 2007, reference 01, decision is affirmed. The claimant has not been able to work and available for work since establishing her claim for benefits. Accordingly, the claimant is ineligible for benefits effective July 8, 2007.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/kjw