

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOANN M BUTLER
Claimant

REM IOWA COMMUNITY SERVICES INC
Employer

APPEAL NO. 15A-UI-11241-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/06/15
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 2, 2015 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 22, 2015. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibits A-H were admitted into evidence.

ISSUE:

The issue in this matter is whether 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: Claimant was injured at work in April 2014. Claimant is still employed by employer. Claimant's injury has made it such that claimant is no longer able to do the job she had originally been hired to do. Whereas claimant was working full time, visiting clients at their homes prior to her injury, she now works two days a week, four hours a day exclusively in employer's office.

Claimant has reached an agreement with her doctor and her employer where she works four hours a day, two days a week. This is the work restriction that the physician has set for claimant. Employer has claimant work in the office for those hours. According to the agreement, claimant is not to work more hours.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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(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 injury in this matter was work related, but the employer is fully complying with the restrictions set by the physician in this matter. To the extent that claimant is not working full time, it is because claimant is not able and available to work any hours in addition to those she is scheduled. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The decision of the representative dated October 2, 2015, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective September 6, 2015, until claimant has a full medical release to return to work.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css