

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TRAMESHA DAVIS
Claimant

TORRID LLC
Employer

APPEAL 21A-UI-19870-SN-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/30/21
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22 – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

On September 8, 2021, Tramesha Davis (claimant/appellant) filed an appeal from the August 30, 2021, reference 02, unemployment insurance decision that denied benefits based upon the conclusion she was not able to and available for the week ending May 30, 2021. After due notice was issued, a telephone conference hearing was scheduled to be held on October 29, 2021. The claimant participated. The employer did not participate. Official notice was taken of the agency records. Exhibit A was received into the record.

ISSUE:

Was the claimant able to work, available for work, and actively and earnestly seeking work the week ending May 30, 2021?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant has worked for the employer, Torrid LLC, as a part-time sales associate since December 17, 2020. The claimant's hourly pay was \$10.00.

On April 27, 2021, the claimant was admitted to the hospital due to a large abscess resulting from an advanced staphylococcus infection. The claimant requested and was granted a leave of absence to expire on May 3, 2021.

On May 5, 2021, the claimant went back to the emergency room for a couple of hours due to complications with her staphylococcus infection.

On May 6, 2021, the claimant was discharged from the hospital, but she was not released to return to work.

On May 12, 2021, the claimant's physician restricted her from working for the next two weeks due to complications with her staphylococcus infection.

On June 9, 2021, the claimant visited her physician. On that date, the claimant's physician released her to return to work with the following restrictions on June 17, 2021, "No lifting, pushing, pulling [over] 15 [pounds]; no prolonged standing; needs frequent breaks to sit; no squatting or waist bending." The claimant provided a copy of this doctor's note. (Exhibit A) The claimant provided these restrictions to her employer by email later that day. Human Resources Specialist Melissa Goger told the claimant that the proposed restrictions were too severe to accommodate her in her current role. Ms. Goger concluded that the claimant's leave of absence would be extended until her restrictions were modified such that she could be accommodated. During the hearing, the claimant testified roughly 60% to 70% of her tasks in a day required violating these restrictions.

On July 22, 2021, the claimant visited her physician. On that date, the claimant's physician restricted her from working until October 22, 2021 due to "several serious health issues." The claimant provided a copy of this doctor's note. (Exhibit A)

On October 26, 2021, the claimant was released to return to work without restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective May 30, 2021?

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".

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. 871-24.22(2) provides:

Benefit 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23 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.

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

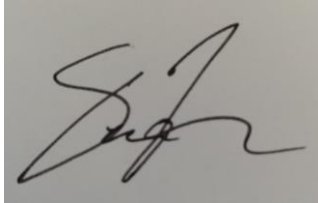
(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

An individual claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

The claimant was subject to restrictions for nearly the entire claims period. For part of that period, the claimant was released to return to work with severe restrictions that would have prevented her from performing roughly 60% to 70% of the job duties she ordinarily performed in her role. An employer is not required to provide light duty work as an accommodation for a non-work-related injury. As a result, the claimant was not able and available for the period she was released conditioned on these restrictions. The claimant is disqualified from benefits under Iowa Admin. Code r. 871-24.23 (1) and (35). Accordingly, she is not eligible for unemployment insurance benefits.

DECISION:

The August 30, 2021, reference 02, unemployment insurance decision is affirmed. The claimant was not able to work and available for work effective May 30, 2021. The claimant was either ill or too restricted from her doctor to perform her job duties. Benefits are denied.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is shown within a rectangular frame.

Sean M. Nelson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515) 725-9067

November 30, 2021
Decision Dated and Mailed

smn/mh