

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

PEARL E WILLIAMS
Claimant

APPEAL NO. 15A-UI-09670-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLGENCORP LLC
Employer

OC: 06/14/15
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the representative's decision dated August 20, 2015, reference 03, which denied unemployment insurance benefits as of June 14, 2015 finding that the claimant does not meet the availability requirements of law as she is not able to work. After due notice was provided, a telephone hearing was held on September 15, 2015. The claimant participated. The employer participated by Ms. Ashley Brockman, Store Manager.

ISSUE:

At issue in this matter is whether the claimant is able and available for work within the meaning of the Iowa Employment Security Law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Pearl Williams began employment with Dolgencorp LLC on July 14, 2011. Ms. Williams was hired to work as a part-time sales associate and was paid by the hour. Her immediate supervisor is the store manager, Ashley Brockman.

Ms. Williams called off work on March 7, 2015 because she had been hospitalized due to a broken leg/hip. The claimant requested and was approved for a medical leave of absence with the company. Under the terms of the agreement, the employer was saving the claimant's job or a similar job for Ms. Williams and Ms. Williams plans on returning to employment with Dolgencorp stores when she is fully released by her physician.

Ms. Williams filed a claim for unemployment insurance benefits with an effect date of June 14, 2015. At the time that Ms. Williams filed a claim for benefits she continued to be on a medical leave of absence from Dolgencorp LLC. On an unspecified date in July 2015, the claimant's doctor provided to Ms. Williams a statement releasing her to work on light duty restricting the claimant from walking over 100 yards, lifting over 20 pounds or engaging in bending or reaching. The employer did not receive a copy of the claimant's light-duty release, however,

since the claimant's illness or injury was non-work-related, the claimant was required under company policy, to be fully released before returning to employment. During this period, Ms. Williams continued to be on a medical leave of absence from Dolgencorp stores and has not been fully released to return to work. At the time of hearing, Ms. Williams stated that she is not able to work and scheduled for more surgery in the future.

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 § 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".

An otherwise eligible claimant is eligible to receive unemployment insurance benefits with respect to any week only if the evidence indicates that the claimant is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22.

To satisfy the availability ableness requirement, an individual must be physically and mentally able to work in gainful employment, and must be willing, able and ready to accept suitable work which the individual does not have good cause to refuse and genuinely attached the labor market.

Under the workforce development rule that requires claimants to be able to work, ability to work means "that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonable, suitable, comparable gainful full-time endeavor or other than self-employment, which is generally available in the labor market in which the individual resides." See 871 IAC 24.22(1)(b).

The evidence in the record establishes that Ms. Williams has not been able to work within the meaning of the Iowa Employment Security Law since her injury in March 2015. Because the claimant's illness or injury was not work related, she was required under company policy and Iowa law to obtain a full release before returning to the employment with Dolgencorp. These limitations imposed by the claimant's physician medical leave prevented the claimant from walking, lifting, bending or reaching have effectively removed the claimant from being able to work within the meaning of the Employment Security Law. The claimant has not been able or available for work to the same degree and to the same extent as when she accrued her base period wages with this employer and, therefore, does not meet the unemployment insurance availability requirements set forth in Iowa Code section 96.4(3). The evidence further indicates that Ms. Williams continues to be on an approved leave of absence and a leave of absence negotiated with the consent of both parties, the employer and the employee, is deemed a period

of voluntary unemployment for the employee – individual, and the individual is considered ineligible for benefits for that period. 871 IAC 24.22(2)(j).

For the reasons stated herein, the administrative law judge concludes that the evidence in the record establishes that the claimant is not able and available for work within the meaning of Iowa Employment Security Law effective June 14, 2015 when she opened a claim for benefits. Benefits are withheld until such time as the claimant is able and available for work to the extent that she was able and available for work during the base period history.

DECISION:

The representative's decision dated August 20, 2015, reference 01, is affirmed. The claimant does not meet the availability requirements of Iowa law as she is not able to work. Benefits are withheld until such time as the claimant is able and available for work to the extent that she was able and available for work during the base period history.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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