

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LINDA R LARSON
Claimant

APPEAL NO. 10A-UI-17487-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GIT-N-GO CONVENIENCE STORES INC
Employer

OC: 11-14-10
Claimant: Appellant (1-R)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 13, 2010, reference 04, decision that denied benefits for the one-week period ending November 20, 2010, finding the claimant not able to and available for work that week. After due notice was issued, a hearing was held on February 22, 2011. The claimant did participate. The employer did not participate.

ISSUE:

Was the claimant able to and available for work for the week ending November 20, 2010?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was off work from November 15 through November 18, due to removal of a skin cancer. The claimant was not able to wear her glasses during that time period due to the surgery and was unable to work. Her treating physician also removed her from work through November 18, 2010.

The claimant was separated from her employment on November 19, 2010. No fact-finding has been held on that separation.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work.

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 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 24.23(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.

The claimant was not physically able to work from November 15 through November 18, because she was not able to wear her glasses due to a skin cancer surgery. She was not able to perform any work for the majority (four days) of the work week. Accordingly, benefits are denied for the one-week period ending November 20, 2010.

DECISION:

The December 13, 2010 (reference 04) decision is affirmed. The claimant is not able to work and available for work effective for the one-week period ending November 20, 2010. Benefits are denied.

REMAND:

The separation issue delineated in the findings of fact is remanded for an initial investigation and determination.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw