

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**AMY G HOLMGREN**  
Claimant

**DIERCKS SENIOR CARE LLC**  
Employer

**APPEAL 20A-UI-11374-JE-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/05/20**  
**Claimant: Appellant (2)**

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:**

Claimant filed an appeal from the September 9, 2020 (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified of the hearing. A telephone hearing was held on November 6, 2020, at 3:00 p.m. The hearing was conducted by Administrative Law Judge Julie Elder. Claimant participated. Claimant's husband, Paul Holmgren, participated as claimant's non-attorney representative. Employer participated through Candy Diercks, Owner. No exhibits were admitted. Administrative Law Judge Adrienne Williamson has reviewed the record in its entirety and makes the following Findings of Fact and Conclusions of Law.

**ISSUE:**

Whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a part-time Non-Medical Caregiver from August 30, 2017 until her employment with Diercks Senior Care ended on May 26, 2020. Claimant worked Monday through Thursday from 7:30 a.m. until 3:00 p.m. and Friday from 8:00 a.m. until 12:00 p.m. Claimant provided caregiver services for one particular client ("the client") but also had the ability to pick up other shifts.

Claimant traveled out of state for vacation from March 17, 2020 until March 24, 2020. Employer required claimant to quarantine for 14 days upon her return from vacation. Claimant filed an initial claim for unemployment insurance benefits effective April 5, 2020.

Employer allowed claimant to return to work on April 7, 2020. On or about March 31, 2020, the client's wife informed employer that claimant's services would not be needed temporarily, because the client's wife had been laid off and was able to provide caregiving services to the client. The client's wife was laid off until May 18, 2020.

Between April 7, 2020 and May 18, 2020, employer notified all employees of available evening and weekend shifts. Claimant did not respond because these shifts did not fall within her hours of availability. On April 30, 2020, claimant notified employer that she was able and available for daytime shifts. On May 8, 2020, employer offered claimant a daytime shift on May 12, 2020; claimant accepted and worked that shift. Claimant returned to work for her client on May 18, 2020.

From April 5, 2020 until May 18, 2020, claimant had no barriers to employment. Claimant had an underlying medical condition for which she was receiving treatment. Claimant had the condition for approximately a year and worked during that time. The condition did not affect claimant's ability to perform her job. Claimant has a 15-year-old child. The child's school was closed due to Covid-19. Claimant did not require work-related childcare. The school's closure would not prevent claimant from working.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes claimant was able to and available for work.

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) 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(1), (8) provide:

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.

(8) Where availability for work is unduly limited because of not having made adequate arrangements for child care.

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.

Claimant had an underlying medical condition for which she received treatment. The medical condition did not prevent claimant from performing her job duties. Claimant has a 15-year-old child, but does not require work-related childcare. Claimant was not prevented from working due to school closure. From April 5, 2020 until May 12, 2020, claimant had no barriers to employment. The reason claimant did not work during this time was because employer required her to quarantine and employer did not have daytime shifts available for claimant. Claimant was able to and available for work; accordingly, benefits are allowed provided claimant is otherwise eligible.

**DECISION:**

The September 9, 2020 (reference 01) unemployment insurance decision is reversed. Claimant was able to and available for work. Benefits are allowed provided claimant is otherwise eligible.

A handwritten signature in cursive script, appearing to read "Adrienne C. Williamson".

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Adrienne C. Williamson  
Administrative Law Judge  
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January 29, 2021  
Decision Dated and Mailed

acw/scn