

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**LISA K KIRBY**  
Claimant

**CASEY'S MARKETING CO**  
Employer

**APPEAL 15A-UI-10272-DL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/16/15**  
**Claimant: Respondent (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The employer filed an appeal from the September 4, 2015, (reference 02) unemployment insurance decision that allowed benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on September 25, 2015. Claimant participated. Employer participated through Equifax UI consultant, Alisha Weber, and area supervisor, Angela Boge. The administrative law judge took official notice of the administrative record, including fact-finding documents. Employer's Exhibit 1 was received. Claimant's Exhibit A was received.

**ISSUE:**

Is the claimant able to and available for work effective August 16, 2015?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: On August 14 her doctor said she could not work until her chemotherapy treatments would be complete on October 21, 2015. The employer believed the doctor said she would not be able to work because of chemotherapy side effects until December 16, 2015. (Employer's Exhibit 1) On September 2, 2015, her physician opined she "may work up to 35 hours per week, she may need to go home early or not work at all" but "she may work according to how she is feeling that day." (Claimant's Exhibit A) The employer opted not to accommodate those restrictions. She is eligible to reapply for work. She is applying for work close to her home near Marion, Iowa. Every other Wednesday she is required to be in the hospital for chemotherapy and sometimes is not able to work the following Thursday and Friday because of medication side effects.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective August 16, 2015.

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".

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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723.

Iowa Code § 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given her education, training and work experience, and any medical restrictions. Since the employment ended on August 15, 2015, claimant is no longer obligated to return to employer upon her medical release to offer her services. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Since all of her base period employment was with Casey's and Casey's regularly employs people part-time and minimal accommodation would be required for her to have retained full-time employment, she is considered able to work even if she cannot yet return to a job as most recently performed for the employer. Thus the claimant is considered as able to work as of August 16, 2015. Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

**DECISION:**

The September 4, 2015, (reference 02) unemployment insurance decision is affirmed. The claimant is able to work and available for work effective August 16, 2015. Benefits are allowed, provided she is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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