

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHRISTINE A FOSTER**

Claimant

**APPEAL NO: 14A-UI-09174-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**COLLEGE COMMUNITY SCHOOL DISTRICT**

Employer

**OC: 06/22/14**

**Claimant: Appellant (1/R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Christine A. Foster (claimant) appealed a representative's August 22, 2014 decision (reference 05) that concluded she was not qualified to receive unemployment insurance benefits because she was not able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2014. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Jamie Coquyt appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

**FINDINGS OF FACT:**

After a prior period of employment with the employer, the claimant most recently began working with the employer on August 9, 2013. She works part time (about 25 hours per week) as a bus driver. She sought benefits for the period between academic terms; while she was not eligible during this period based upon her wage credits with the employer, she was monetarily eligible to receive benefits during that period based upon wage credits with other employers (as determined by a representative's decision issued on August 1, 2014 (reference 01)).

The claimant's last day of work with the employer before the start of the 2014 – 2015 academic term was June 6. She broke her foot that day. Normally during the summer she worked as a lifeguard, but because of her broken foot and restrictions she was not able to do this. She was not released by her doctor as able to return to work until July 25, 2014. She then returned to work with this employer in August 2014. She has not established any other work she would have been able to perform while she was under her doctor's restrictions.

## REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, be available for work, and be earnestly and actively seeking work. Iowa Code § 96.4-3. A person who is under a doctor's care and has not been released as able to return to work is not able and available for work. Rules 871 IAC 24.22(1)a; 871 IAC 24.23(34, 35). To be found 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); Rule 871 IAC 24.22(1). The claimant has not demonstrated that she was able to work in some gainful employment. Benefits are denied from June 22 through July 26, 2014.

The administrative law judge notes that there had been another representative's decision issued on August 4, 2014 (reference 03) which had concluded that the claimant was overpaid unemployment insurance benefits "for the 5 week(s) between 06/22/14 and 07/26/14. This is because of the decision dated 07/31/14, which disqualified you as not being able and available for work." The administrative law judge observes that there was no decision regarding the claimant issued on July 31, 2014, but there was a decision issued on August 1, 2014 (reference 02), which had in fact dealt with the claimant not being able and available for work for the period of June 22 through July 26. However, that reference 02 decision was declared null and void in a decision issued on August 21, 2014 (reference 06). The basis for the August 4 reference 03 decision therefore was effectively removed. It appears that there should likely be a new decision issued to replace the reference 03 decision, to be based upon the reference 05 decision affirmed in this case. The matter is remanded to the Benefits Bureau for a review and any necessary action in this regard.

## DECISION:

The representative's August 22, 2014 decision (reference 05) is affirmed. The claimant is was not work and available for work for the period of June 22 through July 26, 2014. The claimant was not qualified to receive unemployment insurance benefits for this time. The matter is **REMANDED** to the Benefits Bureau for review and any necessary action regarding the basis for the resulting overpayment decision.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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