

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VASILIKI C MARKOU
Claimant

SCE PARTNERS LLC
Employer

APPEAL 16A-UI-11588-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/25/16
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 17, 2016, (reference 04) unemployment insurance decision that denied benefits as of September 25, 2016. The parties were properly notified about the hearing. A telephone hearing was held on November 10, 2016. CTS Language Link interpreter ID number DJTS initially started the hearing, but became disconnected. Claimant participated through CTS language link interpreter ID number 062629. Mike Michelakakis participated on claimant's behalf. Employer initially participated through Renae Merchant and Brandi Redel, but during the hearing both Ms. Merchant and Ms. Redel elected to disconnect from the hearing and not participate. Claimant exhibit A was admitted into evidence with no objection.

ISSUE:

Is the claimant 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 full-time as a housekeeper starting around May 6, 2015. On September 7, 2016, claimant fell at work and fractured a vertebrae in her spine. On September 7, 2016, a doctor placed claimant on work restrictions (lifting no more than ten pounds, no pushing or pulling, and no lifting above her shoulders). Claimant provided the work restrictions to the employer. The employer complied with the work restrictions and placed claimant on light duty. Claimant was able to perform the light duty work for the employer. On September 14, 2016, claimant saw a doctor and her restrictions remained the same. On September 17, 2016, claimant was separated from employment with this employer (SCE PARTNERS LLC). On September 21, 2016, claimant had a MRI and her restrictions stayed the same, plus no climbing. On September 28, 2016, a doctor released claimant to light duty and she was able to lift up to twenty pounds. On November 2, 2016, a doctor reduced her lifting restrictions to ten pounds, but there were no other restrictions.

Around August 25, 2016, claimant started working part-time for Kentucky Fried Chicken. Claimant's part-time employer was able to accommodate her work restrictions.

Claimant has never been told by a doctor that she could not work. Claimant is currently looking for work and is performing at least two job contacts per week. Claimant is still under her work restrictions, but is able to perform light duty work. Claimant is still performing work for her part-time employer Kentucky Fried Chicken.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is able to work and available for work effective September 25, 2016.

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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

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.

Inasmuch as the medical condition was work-related and the treating physician has released claimant to return to work with work restrictions since September 7, 2016, she has established her ability to work. No evidence was presented that a doctor ever informed her she was unable to work. Claimant is currently working and has worked for a part-time employer since around August 25, 2016. The part-time employer has been able to accommodate her work restrictions since her injury. Thus, claimant has established a type of work of which she is capable of performing given her medical restrictions. Claimant is also looking for employment and is performing at least two job searches a week. Benefits are allowed.

DECISION:

The October 17, 2016, (reference 04) unemployment insurance decision is reversed. Claimant is able to work and available for work effective September 25, 2016. Benefits are allowed, provided she is otherwise eligible.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs