

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ALEXANDRIA B GORDON**  
Claimant

**MERCY HOSPITAL**  
Employer

**APPEAL 17A-UI-05106-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/23/17**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

Alexandria B. Gordon (claimant) filed an appeal from the May 8, 2017, reference 02, unemployment insurance decision that denied benefits based upon the determination she is unable to perform work at this time due to illness and is not able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on June 1, 2017. The claimant participated. The claimant registered a witness who did not answer the phone or call back while the record was open and did not participate in the hearing. Mercy Hospital (employer) participated through Patient Financial Services Supervisor Rory Ditzler and Human Resource Business Partner Michael Wilkinson.

The claimant received her hearing notice within three days of the date it was mailed on May 19, 2017. However, she did not closely read the document until May 30, 2017. She did not submit a subpoena request for documents prior to the hearing and would have requested her pay stubs and the employer's employment policies. As the instructions for requesting a subpoena were not followed and the documents being requested were general in nature, the hearing proceeded without the subpoena for those documents being issued. The employer offered two documents into the record, the claimant's resignation letter and the employer's acceptance of her resignation; however, as they were faxed to the Appeals Bureau and mailed to the claimant on May 30, 2017, the claimant had not yet received them. The documents were not admitted into the record.

**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: The claimant was employed full-time as an Access Services or Registration Representative beginning on July 10, 2006. The claimant worked primarily in the Emergency Department until January 2017 when she transferred to a Pre-Registration Representative because of the

increased workload and stress that had started three years prior with the passage of the Affordable Care Act. She was separated from employment on March 17, 2017, when she quit.

The claimant first requested intermittent leave under the Family Medical Leave Act (FMLA) in August 2016. She took intermittent leave due to hospitalizations related to her high blood pressure and anxiety brought on by stressful situations. She did not file a Workers' Compensation claim. On March 6, 2017, the claimant submitted her resignation effective March 17 due to medical concerns beyond her control. Her doctor did not recommend or advise her to quit her job. The claimant testified she continues to be unable to work due to her health conditions.

### **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 effective April 23, 2017. Benefits are denied.

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 provides, in relevant part:

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.

....

(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.

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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as claimant removed herself from work without a medical directive, she is not considered able to or available for work. The claimant has demonstrated she is not currently willing, able, or ready to accept employment. Benefits are denied until such time as she is willing to accept employment and, only if, she is otherwise eligible.

**DECISION:**

The May 8, 2017, reference 02, unemployment insurance decision is affirmed. The claimant is not able to work and available for work effective April 23, 2017. Benefits are withheld until such time as the claimant the claimant is willing to accept employment and, only if, she is otherwise eligible.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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