

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMY L DUFFY
Claimant

DEE ZEE INC
Employer

APPEAL 16A-UI-08666-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/19/16
Claimant: Appellant (4)

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:

Amy L. Duffy (claimant) filed an appeal from the July 13, 2016, (reference 03) unemployment insurance decision that denied benefits based upon the determination she was not able and available for work beginning June 19, 2016 due to surgery. The parties were properly notified about the hearing. A telephone hearing was held on August 26, 2016. The claimant and her friend Christopher Peek participated on her behalf. Dee Zee, Inc. (employer) did not participate. Claimant's Exhibits A and B were received.

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 filed a claim for unemployment insurance benefits during the week of June 19, 2016. She was unable to work due to a shoulder injury and underwent shoulder surgery on June 29, 2016.

The claimant's doctor released her back to modified work on July 12, 2016. (Claimant's Exhibit A.) The claimant was not able to use her left arm other than to type or write. The claimant applied for jobs such as secretary work in a law office and hostess positions at local restaurants. The claimant had previously held similar positions. The claimant has applied for two jobs each week since her modified release to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is not able to work and available for work for the period from June 19, 2016 through July 9, 2016; but is available for work effective July 10, 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 medical practitioner and has not been released as being able to work.

The claimant was unable to work before and immediately following her shoulder surgery. She was not available for work during that time as her doctor had not released her as being able to work. The claimant has presented medical evidence that she was later released back to modified duty. She has credibly testified there are jobs she could work within her restrictions. The claimant is able and available to work and eligible for benefits effective July 10, 2016.

DECISION:

The representative's decision dated July 13, 2016, (reference 03) is modified in favor of the appellant. The claimant was not able to work and available for work for the three week period ending July 9, 2016. Benefits are allowed effective July 10, 2016.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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