

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TARYN E PERSINGER
Claimant

APPEAL 19A-UI-07655-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/25/19
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant/appellant filed an appeal from the September 18, 2019 (reference 03) unemployment insurance decision that found claimant was not eligible for unemployment benefits because she was not able to perform work effective August 25, 2019. The claimant was properly notified of the hearing. A telephone hearing was held on October 21, 2019. The claimant, Taryn E. Persinger, participated personally and was represented by Cory McGregor. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the claimant able to work and available for work effective August 25, 2019?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a customer service associate. She was employed from March 15, 2017 until August 22, 2019, when she was discharged. Her job duties included providing customer service over the telephone. Claimant's immediate supervisor was Cassie Prather.

While at work on July 16, 2019, she suffered from mental health issues and left work early to seek medical attention. Claimant was unable to work from July 17, 2019 through September 17, 2019 due to her mental health issues. On September 17, 2019, claimant was released from her doctor to return to full-time work without restrictions.

Claimant's administrative records establish that an unemployment insurance decision was issued on September 18, 2019 (reference 04) finding that the claimant was now able to and available for work effective September 15, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was not able to and available for work effective August 25, 2019 through September 14, 2019. Claimant is able to and available for work effective September 15, 2019, provided she is otherwise eligible.

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 § 96.19, subsection 38, paragraph "b", subparagraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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).

Claimant was unable to work from August 25, 2019 through September 14, 2019. She was released from her doctor to return to full-time work as of September 17, 2019. As such, she is considered able to and available for work beginning the week of September 15, 2019. See unemployment insurance decision was issued on September 18, 2019 (reference 04).

DECISION:

The September 18, 2019 (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to work effective August 25, 2019 through September 14, 2019 and benefits are denied for that period of time. Claimant is able to and available for work effective September 15, 2019 and benefits are allowed, provided she is otherwise eligible.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn