

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**IVETTE R TIGS**

Claimant

**APPEAL 17A-UI-10752-DB**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/24/17**

**Claimant: Appellant (4)**

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Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the October 11, 2017 (reference 02) unemployment insurance decision that found claimant was ineligible for unemployment benefits because she was not able to perform work due to surgery. The parties were properly notified of the hearing. An in-person hearing was held in Ottumwa, Iowa on November 15, 2017. The claimant, Ivette R. Tigs, participated personally. Attorney Phil Miller represented the claimant. Claimant's Exhibit A was admitted. 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?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. Claimant is no longer employed with Swift Pork Company. She was a general laborer at Swift Pork Company.

On September 20, 2017, claimant had surgery for carpal tunnel syndrome on her right wrist. Per her physician's instructions, she was not able to lift anything for six weeks after her surgery. She was able to work without restrictions effective Thursday, November 2, 2017. Claimant will need to have surgery on her left wrist but no surgery date has been determined at this time.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant is able to work effective November 2, 2017, and benefits are allowed the benefit week beginning November 5, 2017, so long as claimant 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".

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.

Claimant has been released back to work without restrictions effective November 2, 2017. An individual's availability for work is determined on a week-by-week basis and the individual must be able to work the majority of the week. As such, claimant is able to work the benefit week starting November 5, 2017. However, claimant has failed to file any weekly-continued claim for benefits since October 7, 2017. Claimant must file weekly-continued claims for benefits each week she intends to claim unemployment insurance benefits and meet all other eligibility requirements.

**DECISION:**

The October 11, 2017 (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant is able to work effective November 5, 2017 and benefits are allowed, so long as claimant is otherwise eligible.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs