

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAURIE A MCCRACKEN
Claimant

CITY OF AMES
Employer

APPEAL 17A-UI-08220-DG
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/16/17
Claimant: Appellant (1)

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 4, 2017, (reference 02) that held claimant not able to and available for work. After due notice, an in-person hearing was scheduled for and held on August 29, 2017 in Des Moines, Iowa. Claimant participated personally. Employer participated by Krista Hammer, Human Resources Officer. Employer's Exhibits 1-6 were admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant began working for employer on September 3, 2013. Claimant was employed as a full-time procurement specialist.

Claimant's last day of work was July 3, 2017. Claimant's employment was terminated by employer on July 13, 2017 because claimant was ill and was not able to come into work.

Claimant began having complications involving a surgical repair of a hernia in November of 2016. Claimant endured four corrective surgical procedures to correct the medical problems she was experiencing. During that time, claimant had exhausted all FMLA and other leave available to her from the employer.

Employer met with claimant and discussed her medical restrictions and her employment on July 7, 2017. Claimant was not able to work full-time and employer was not able to accommodate her work restrictions. Claimant was later notified on July 14, 2017 that her employment was being terminated by employer on July 17, 2017. Claimant requested an extended leave of absence without pay. That request was denied.

Claimant has not been released to go back to work without restrictions as of the date of the hearing, and she does not expect to be able to work full-time hours until December, 2017. Claimant was a full-time employee prior to being placed on medical restrictions by her doctor.

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 July 16, 2017.

Iowa Code section 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.

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. Emp't Appeal Bd.*, 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. This means that when evaluating whether a person with a protected

disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Inasmuch as the claimant is not able to work full-time hours, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to work full-time.

DECISION:

The decision of the representative dated August 4, 2017, (reference 02) is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective July 16, 2017 until such time as she is able to work full-time hours. Claimant should report any changes in her medical restrictions to the department.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn