

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

SHERRY M NAMANNY
Claimant

APPEAL NO. 07A-UI-04874-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINK SNACKS INC
JACK LINKS BEEF JERKY
Employer

OC: 03/04/07 R: 01
Claimant: Appellant (1)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Sherry Namanny filed a timely appeal from the May 9, 2007, reference 03, decision that denied benefits effective March 4, 2007 and concluded she was not able to work due to injury. After due notice was issued, a hearing was held on June 5, 2007. Ms. Namanny participated. The employer did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The administrative law judge received Claimant's Exhibit A and Department Exhibits D-1 and D-2 into evidence. The administrative law judge left the record open to allow the claimant to submit updated medical documentation. On June 8, 2007, the claimant provided an appointment letter dated May 23, 2007, which was received as Exhibit B, and a doctor's note dated February 2, 2007, which was received as Exhibit C.

ISSUE:

Whether the claimant has been able to work and available for work since establishing his/her claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sherry Namanny has long-standing health issues relating to her ankle and was prescribed an ankle brace in June 2002 to address Peroneal Tendonitis and Pes Cavus (exaggerated high arch). On February 2, 2007, Sherry Namanny's ankle popped as she was walking. Dr. R.L. Crampton, D.P.M, diagnosed Ms. Namanny with a non-work-related broken ankle and told Ms. Namanny that she had some deterioration issues. On February 2, 2007, Dr. Crampton issued a medical release that reads as follows: "Pt to work with a cam walker due to R [right] ankle pain." On February 6, 2007, Dr. Crampton issued a medical excuse that reads as follows: "Due to pain in her Right ankle; with x-rays showing large bone defect anterior to her R [right] ankle, she cannot work now with the pain and swelling and motion." At the time, Ms. Namanny was employed by Link Snacks as a full-time production worker. Ms. Namanny subsequently accepted an offer of new employment and voluntarily quit Link Snacks to commence the new employment. However, the new employer would not allow Ms. Namanny to commence working, due to her health issue.

Ms. Namanny established a claim for benefits that was effective March 4, 2007. On April 19, 2007, Administrative Law Judge Beth Scheetz entered a decision that Ms. Namanny's separation from Link Snacks did not disqualify Ms. Namanny for benefits. See Appeal Number 07A-UI-03502-S2T. However, based on the claimant's testimony at the March 26, 2007, hearing, Judge Scheetz remanded the matter for determination of whether Ms. Namanny had been able to work and available for work since establishing her claim for benefits. At the March 26 hearing, Ms. Namanny had testified that she expected to have surgery in May 2007.

Ms. Namanny's contact with Dr. Crampton in February 2007 represents Ms. Namanny's most recent evaluation and/or treatment. Ms. Namanny is currently scheduled for a June 28, 2007 appointment with the Ankle Arthritis Clinic in the Department of Orthopaedics at the University of Iowa Hospitals & Clinics (UIHC). Ms. Namanny's pending surgery has been delayed by the UIHC because she does not present an emergency case.

Ms. Namanny continues to be interested in performing production labor, bartending, or working in a restaurant.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 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.

871 IAC 24.23 provides, in relevant part as follows:

871—24.23(96) Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(6) If an individual has a medical report on file submitted by a physician, stating such individual is not presently able to work.

24.23(34) Where the claimant is not able to work due to personal injury.

24.23(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.

Despite Ms. Namanny's clear desire to work, the greater weight of the evidence indicates that Ms. Namanny has not been able to work since establishing her claim for benefits. The most recent medical documentation available clearly states that Ms. Namanny is not able to work. The evidence indicates that Ms. Namanny's health condition is chronic. The evidence indicates that the health condition necessitates surgery, but that the surgery had not yet occurred. Because the weight of the evidence indicates Ms. Namanny has not been able to work since establishing her claim for benefits, Ms. Namanny is not eligible for benefits. If and when Ms. Namanny provides updated medical documentation that she has been released to work, or medical documentation indicating that her medical condition does not prevent her from working, Ms. Namanny's eligibility for benefits will need to be readdressed.

DECISION:

The Agency representative's May 9, 2007, reference 03, decision is affirmed. The claimant has not been able to work since establishing her claim for benefits. Accordingly, the claimant is not eligible for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/kjw