

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HILDA M HENELY
Claimant

APPEAL NO: 10A-UI-01701-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 07/23/06
Claimant: Appellant (4/R)

Section 96.4-3- Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed a representative's January 28, 2010 decision (reference 01) that held her ineligible to receive benefits as of August 24, 2008. The telephone hearing was held on March 13, 2010. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

As of August 24, 2008, was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of July 23, 2006. The claimant worked at K-Mart in the jewelry department as a part-time employee. The claimant's employment at K-Mart ended in May 2008, because she kept falling at work.

The claimant started receiving emergency unemployment compensation benefits during the week of August 24, 2008. After the claimant's employment with K-Mart ended, she looked for work in a jewelry store or for office work. The claimant looked for work that did not require her to stand like she had at K-Mart. The claimant has prior office work experience. She can file and answer phones, but she does not use a computer. When the claimant looked for work, she went to stores in a mall and asked what work the employer had available or open that she did not have to stand all day. The claimant did not get any job offers. She attributed this not only to the economy but also her age and because she uses a cane.

The claimant was looking for work in late November 2009. In December 2009, the claimant was unable to look for work because she was falling down too much and her doctor told her she could not drive. The claimant had surgery in late December 2009 or early January 2010. As of the date of the hearing, she is still recuperating from the surgery and unable to work.

The claimant has filed weekly claims continuously since August 24, 2008.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code § 96.4-3. The claimant established she was able to and available for work as of August 24, 2008. Although the claimant was not looking for a job that required her to stand as she done at K-Mart, she established she was looking for work she had experience in and did not unduly restrict the type of work she was willing to do in which she had experience.

However, as of November 29, 2009, the evidence indicates that as a result of a health condition, the claimant was unable to work as of this date. In December 2009, the claimant's physician restricted her from driving and she was no longer able to look for work. As of the date of the hearing, the claimant admitted she was still unable to work because she was still recuperating from surgery she had in late December 2009 or early January 2010.

The claimant continued to file for weekly benefits because she believed she was entitled to receive benefits based on the ten years she worked at K-Mart. The wages the claimant earned at K-Mart made her monetarily eligible to receive benefits, but the law requires claimant to be able to and available for work for each week a claimant files a claim for benefits.

As of November 29, 2009, the claimant is not eligible to receive benefits. This ineligibility continues until the claimant reopens her claim and establishes that she is able to and available for work.

Since the claimant has received benefits since November 29, 2009, an issue of overpayment is remanded to the Claims Section to determine.

DECISION:

The representative's January 28, 2010 decision (reference 01) is modified in the claimant's favor. The claimant established she is able to and available for work from August 24, 2008, through November 29, 2009. As of November 29, the claimant was not able to or available for work as the result of a medical condition. The claimant shall remain ineligible to receive benefits until she reopens her claim and establishes that she is able to and available for work. An issue of overpayment for benefits the claimant has received since November 29, 2009, is Remanded to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css