

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MELISSA J CASTLEBERRY
Claimant

TEAM STAFFING SOLUTIONS INC
Employer

APPEAL 16A-UI-05159-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/10/16
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from the May 3, 2016, (reference 02) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on May 18, 2016. Claimant participated. Employer participated through Sarah Fiedler, Human Resources Generalist and Mary Kirchner, Account Manager. Employer's exhibit one was entered and received into the record.

ISSUES:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has work restrictions which essentially remove her from the job market. She has been offered a job she has turned down including work as a certified nurse aide, and as a CNC machine operator as she cannot physically perform that work right now. The claimant has current work restrictions that prohibit her from lifting over five pounds with her right arm, no repetitive motion with her right arm and no work with her right arm above waist height. The employer does not provide work that complies with light duty work restrictions that arise from non-work related injuries. Once the claimant has been released to return to work without any work restrictions, the employer will place her in a work assignment again.

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 April 10, 2016.

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 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 physician and has not been released as being able to work.

Inasmuch as the medical condition was not work-related and the treating physician has not released the claimant to return to work without restriction, the claimant has not established her ability to work. Employer is not obligated to accommodate a non-work related medical condition, thus until claimant is released to perform full work duties, she is not considered able to or available for work.

DECISION:

The representative's decision dated May 3, 2016, (reference 02) is reversed. The claimant is not able to work and available for work effective April 10, 2016. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs