

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ROCHELLE M ERNZEN
Claimant

APPEAL 21A-UI-18165-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DOLLAR TREE STORES INC
Employer

**OC: 04/11/21
Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Rochelle M. Stone, the claimant/appellant filed an appeal from the July 7, 2021, (reference 01) unemployment insurance decision that denied benefits as of April 11, 2021. The parties were properly notified about the hearing. A telephone hearing was held on September 30, 2021. Ms. Ernzen participated and testified. The employer did not register for the hearing and did not participate. The administrative law judge took official notice of the administrative record.

ISSUE:

Is Ms. Ernzen able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Ernzen began working for the employer on March 13, 2001. She works as a part-time stocker. She usually works 15-20 hours per week. She is paid \$11.81 per hour.

In April 2021, the employer reduced Ms. Ernzen's hours to about 10 hours per week and sometimes less. Ms. Ernzen asked for her usual hours, but the employer did not schedule her for those hours. The employer did not give Ms. Ernzen a reason for why her hours were reduced. Ms. Ernzen had surgery on July 7, 2021. Ms. Ernzen's doctor has not yet released her to return to work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes Ms. Ernzen is able to and available for work from April 11, 2021 through July 6, 2021.

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. 871-24.22(2) provides:

Benefit 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.

(2) *Available for work.* The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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.

(26) 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. 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.

A person claiming benefits has the burden of proof that she is be able to work, available for work, and earnestly and actively seeking work. Iowa Admin. Code r. 871-24.22.

In this case, Ms. Ernzen is able to and available for work from April 11, 2021 through July 6, 2021. Ms. Ernzen was ready to work her usual 15-20 hours per week, but the employer reduced her hours. Since Ms. Ernzen is able to and available for work from April 11, 2021 through July 6, 2021, benefits are allowed during this time period, provided she is otherwise eligible.

Ms. Ernzen is not available for work as of July 7, 2021. Ms. Ernzen had surgery and her doctor has not yet released her to return to work. Since Ms. Ernzen is not available for work as of July 7, 2021, benefits are denied as of July 7, 2021.

DECISION:

The July 7, 2021 (reference 01) unemployment insurance decision is modified in favor of the appellant, Ms. Ernzen. Ms. Ernzen is able to and available for work from April 11, 2021 through July 6, 2021. Benefits are allowed during this time period, provided she is otherwise eligible.

Ms. Ernzen is not available for work as of July 7, 2021. Benefits are denied as of July 7, 2021.



Daniel Zeno
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October 4, 2021
Decision Dated and Mailed

dz/scn