

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHANIE ZAPIOR
Claimant

PRAIRIE VIEW LEASING
Employer

APPEAL 18A-UI-10383-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/23/18
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the October 12, 2018 (reference 02) unemployment insurance decision that denied benefits based upon a determination that claimant was not available for work. The parties were properly notified of the hearing. A telephonic hearing was held on October 31, 2018. The claimant, Stephanie Zapor, participated and was represented by Stuart Higgins, Attorney at Law. The employer, Prairie View Leasing, participated through witnesses Wendy Nelson, Administrator; and Kelley Fiedler, Department Supervisor; and was represented by Katelynn McCollough, Attorney at Law. Employer's Exhibits 1 through 6 were received and admitted into the record without objection.

ISSUE:

Is the claimant able to work and available for work effective September 23, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time, most recently as an environmental employee in laundry and housekeeping, until September 19, 2018, when she was discharged. Claimant earned \$11.43 per hour. Claimant's base period shows she was working, on average, between 30 hours per week (in the fourth quarter of 2017) and 40 hours per week (in the third quarter of 2017). When employed at Prairie View, claimant was considered a full-time employee because she worked at least 32 hours per week.

Claimant had received a restriction from Dr. Efrat Feldman stating she could only work eight hours per day and could not work consecutive days. (Exhibit 5) This note specifically states, "[Claimant] may only work Monday, Wednesday and Friday for 8 hours at a time." Claimant explained that she has been diagnosed with MS. Due to this health condition, working causes her pain and she struggles with her balance. Claimant has applied for disability benefits.

Claimant is currently seeking part-time employment. She is not physically able to perform full-time work, due to the restrictions imposed by Dr. Feldman. Claimant has applied for at least two

jobs each week since filing her claim for benefits. She searches for jobs on Indeed, and she has applied at a hotel and at a machine shop.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant is not currently available for work. Benefits are withheld.

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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.22(2) 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.

(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.

In order to be eligible for unemployment insurance benefits, an individual must be physically able to work, available for work, and actively and earnestly seeking work. In this case, claimant's base period reflects full-time employment. Claimant is not currently physically able to work full-time hours; she is restricted to working only Mondays, Wednesdays and Fridays for eight hours each day. Therefore, benefits are withheld until claimant presents competent evidence showing she is physically able to work full time.

DECISION:

The October 12, 2018 (reference 02) unemployment insurance decision is affirmed. Claimant is not currently able to work full-time employment. Benefits are withheld until claimant presents competent evidence showing she is physically able to work full time and is available for full-time employment.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

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