

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLYN S STEVENSON
Claimant

APPEAL NO. 12A-EUCU-00104-VST

LUTHERAN SERVICES IN IOWA INC
Employer

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/13/11
Claimant: Appellant(2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated March 1, 2012, reference 02, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on March 27, 2012. Claimant participated. The employer participated by Marty Swanson, the director of human resources. The record consists of the testimony of Carolyn Stevenson and the testimony of Marty Swanson.

ISSUE:

Was the claimant able and available for work as of July 13, 2011?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant is presently unemployed. She was separated from her position with the employer effective February 9, 2011. She had sustained a non-work-related injury on August 1, 2010, and had been unable to physically perform her job. Her Family Medical Leave Act (FMLA) expired and the claimant was unable to return to work without restrictions. The final restrictions from her physician stated that she could do sedentary work and carry less than ten pounds.

The claimant has been actively looking for work. She finished her college degree in May 2011 with a BA in human services. She has no physical restrictions at this time. She would like to work as a counselor or perhaps work undercover since she has a minor in criminal justice. She has experience doing computer technical work and has filled out applications at employers such as Families First; Hy-Vee; and John Deere.

REASONING AND CONCLUSIONS OF LAW:

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.

The evidence in this case established that the claimant was able and available for work as of February 13, 2011. The claimant had had a non-work-related injury and was not able to return to work for the employer. The claimant was able to work in other jobs. The claimant had taken college courses and finished her degree in May 2011. She is 60-years-old and has experience in computer technology. At present she has no physical restrictions. The claimant has actively looked for work. The administrative law judge concludes that the claimant was able and available for work as of February 13, 2011.

DECISION:

The decision of the representative dated March 1, 2012, reference 02, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css