

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CANDY R JONES**  
Claimant

**BETTENDORF HEALTHCARE  
MANAGEMENT**  
Employer

**APPEAL NO. 15A-UI-05318-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/28/14**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 20, 2015 reference 06, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on June 8, 2015. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate. Claimant's Exhibit A was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: As claimant was the only participant in the hearing, all findings of fact are gleaned from claimant's testimony. Claimant had been experiencing pains while working for employer. Claimant discovered that her pains were from breast cancer. The cancer was not work related. December 14, 2014 was claimant's last day at work. On December 16, 2014 claimant had surgery to remove her breast. After surgery claimant has been undergoing chemotherapy.

Employer issued a termination letter to claimant on March 20, 2015 as claimant was unable to return to work at that time. Claimant had been placed on an on-call status when she underwent surgery, but had been unable to work when employer attempted to call her in. On April 27, 2015 claimant received a letter from her doctor which would allow her to return to work, part time, doing light duty (under ten pound weight restriction). Claimant has been cleared to return to work with no restrictions to date.

**REASONING AND CONCLUSIONS OF LAW:**

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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 medical practitioner and has not been released as being able to work.

Inasmuch as the illness was not work related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

**DECISION:**

The decision of the representative dated April 20, 2015, reference 06, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, until claimant obtains a full medical release and meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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