

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**JENNIFER R WILSON**  
Claimant

**APPEAL 18A-UI-11254-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 09/02/18  
Claimant: Appellant (4)**

---

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 November 8, 2018, (reference 03) unemployment insurance decision that denied benefits based upon her inability to work due to injury. The claimant was properly notified about the hearing. A telephone hearing was held on December 5, 2018. Claimant participated and testified.

**ISSUE:**

Is the claimant able to work and available for work effective October 21, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant experienced a severe sprain of her ankle and was not able to work beginning the week of October 21, 2018. Dr. Michael Orosz, claimant's treating doctor, released her to return to work without restriction effective November 15, 2018. Claimant has been meeting her weekly job search requirements. Claimant does not have a vehicle, but does have access to public transportation, specifically the bus line in Cedar Rapids. Claimant has no other limitations on her ability to or availability for work.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work for the four week period beginning October 21, 2018 and ending November 17, 2018. Claimant is able to and available for work effective November 18, 2018.

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. 871-24.23(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.

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. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant injured her foot and was taken off work by her doctor for the weeks beginning October 21, 2018 and ending November 17, 2018. Inasmuch as the treating physician has released the claimant to return to work, she has established her ability to work effective November 18, 2018. Claimant is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

**DECISION:**

The November 8, 2018, (reference 03) unemployment insurance decision is modified in favor of the appellant. The claimant was not able to and available for work beginning October 21, 2018 and ending November 17, 2018, but is able to work and available for work effective November 18, 2018. Benefits are withheld for the four week period ending November 17, 2018, but allowed effective November 18, 2018, provided she is otherwise eligible.

---

Nicole Merrill  
Administrative Law Judge

---

Decision Dated and Mailed

nm/rvs