

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOYCE CAMPBELL
Claimant

APPEAL NO. 17A-UI-11046-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

C&W FACILITY SERVICES INC
Employer

OC: 10/08/17
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Joyce Campbell filed a timely appeal from the October 26, 2017, reference 03, decision that denied benefits effective October 8, 2017, based on the claims deputy's conclusion that Ms. Campbell was unable to work according to her physician and therefore could not be deemed available for work. After due notice was issued, a hearing was held on November 15, 2017. Ms. Campbell participated. Jeff Quinn represented the employer. The hearing in this matter was consolidated with the hearing in Appeal Number 17A-UI-11044-JTT. Exhibits A and B were received into evidence.

ISSUE:

Whether Ms. Campbell was able to work and available for work within the meaning of the law from the time she established the claim for benefits that was effective October 8, 2017.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Joyce Campbell established an original claim for benefits that was effective October 8, 2017. Ms. Campbell did not initially make weekly claims. Ms. Campbell reactivated the claim effective October 22, 2017 and thereafter made weekly claims. At the time, Ms. Campbell established her original claim for benefits, she was under the care of a physician and had not been released to work. On October 26 2017, Ms. Campbell provided Iowa Workforce Development with a medical release from Wolfe Eye Clinic. The note is dated October 25, 2017. The note indicated that Ms. Campbell was released to return to work without restrictions. On October 30, 2017, a Workforce Development claims deputy entered a reference 04 decision allowed benefits to Ms. Campbell effective October 22, 2017, based on the claims deputy's conclusion that Ms. Campbell was available for work and medically able to work.

REASONING AND CONCLUSIONS OF LAW:

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(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

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 physician and has not been released as being able to work.

A claimant cannot be deemed available for work within the meaning of the law for any week for which the claimant has not filed a weekly claim for unemployment insurance benefits. Iowa Administrative Code rule 871-24.2(1)(g).

Ms. Campbell was not able to work and available for work at the time she established the original claim for benefits that was effective October 8, 2017 because she was still under a doctor's care and had not been released to return to work. Ms. Campbell was not released to return to work until October 25, 2017. For that reason, and because Ms. Campbell made not weekly claims for the three-week period of October 8-21, 2017, Ms. Campbell was not available for work within the meaning of the law during that three-week period and is not eligible for benefits for that three-week period. Because the October 30, 2017, reference 04 decision decided the able and available issues for the period beginning October 22, 2017, the administrative law judge need not further address the able and available issues for the period beginning October 22, 2017.

DECISION:

The October 26, 2017, reference 03, decision is modified as follows. The claimant was not able to work and available for work during the three-week period of October 8-21, 2017 and is not eligible for benefits for that three-week period.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs