

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TINA M HANSEN
Claimant

IOWA PREMIUM LLC
Employer

APPEAL 17A-UI-01408-CL
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/08/17
Claimant: Appellant (2R)

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 January 30, 2017, (reference 01) unemployment insurance decision that denied benefits based upon claimant's availability for work. The parties were properly notified about the hearing. A hearing was held in Waterloo, Iowa on April 25, 2017. Claimant participated personally and was represented by attorney Philip Miller. Employer did not participate. Claimant's Exhibits A and B were received.

At the outset of the hearing, claimant made a motion for employer to be prohibited from participating and presenting evidence at the hearing because of its failure to comply with subpoenas issued by the agency. The employer notified the agency on April 21, 2017, that it was not going to participate in the hearing. Therefore, claimant's motion was dismissed as moot.

ISSUE:

Is the claimant able to work and available for work effective January 8, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant last worked for employer as a full-time purchasing manager. The position did not require claimant to push or pull items, use stairs, lift, or bend.

In November 2015, claimant suffered a work injury when she fell in the parking lot. Claimant injured her left knee. Claimant filed a workers' compensation claim. Employer provided treatment through its workers' compensation insurance carrier. Dr. Vinyard saw claimant and issued restrictions of no lifting, bending, use of stairs, pushing, or pulling.

On December 13, 2016, employer met with claimant and sent her home pending an investigation. On December 14, 2016, employer offered claimant a demotion to the position of clerk. The clerk position required frequent pushing and pulling.

Over the next two weeks, claimant repeatedly asked for a medical examination to determine whether she was physically able to perform the position of clerk. Claimant also asked to move to the open position of payroll, for which she was qualified physically and professionally. Employer denied claimant's request for a medical examination and to move to the payroll position.

On December 31, 2016, a security guard informed claimant she had been terminated from employer's system and was no longer allowed on the premises. Claimant has not returned to work since this notification from the security guard. There has been no initial investigation and determination on whether the separation from employment disqualifies claimant from receiving benefits.

Claimant filed a claim effective January 8, 2017. While claimant is not able to perform physical work that would damage her knee, her experience is in purchasing and management. Claimant is able to and available for similar office work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work

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. 871-24.23(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 medical practitioner and has not been released as being able to work.

Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with

restrictions the claimant has established her ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated January 30, 2017, (reference 01) is reversed. The claimant is able to work and available for work effective January 8, 2017. Benefits are allowed, provided she is otherwise eligible.

REMAND:

As noted in the findings of fact, claimant has been separated from employment with this employer and there has been no initial decision on whether the separation from employment disqualifies her from receiving benefits. This matter is remanded for an initial determination on whether claimant's separation from employment disqualifies her from receiving benefits.

Christine A. Louis
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Decision Dated and Mailed

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