

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ROCHUNDA HOBSON
Claimant

APPEAL 19A-UI-03456-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

STAFF MANAGEMENT SOLUTIONS LLC
Employer

**OC: 03/17/19
Claimant: Respondent (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated April 16, 2019, (reference 04) that held claimant able to and available for work. After due notice, a hearing was scheduled for and held on May 15, 2019. Employer participated by Susan Murphy, Senior Account Manager. Claimant failed to respond to the hearing notice and did not participate.

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: Claimant is not able to and available for work beginning on March 17, 2019.

Claimant began working for employer on October 15, 2018. She was assigned to work at Proctor and Gamble. Claimant is still employed by employer as of the date of this hearing, and there is work available to her at the Proctor and Gamble facility.

On or about March 6, 2019 claimant was hurt outside of work. Claimant requested a medical leave of absence which was granted by the employer on March 7, 2019. Claimant sought medical treatment, and she was later released back to work without restrictions on April 29, 2019. Claimant returned to work on May 1, 2019. Shortly after she returned to work, claimant began having issues with her health again. Claimant called into work sick on May 2, 2019, May 3, 2019, and on May 9, 2019. She has not returned to work since May 9, 2019. Employer still has work available to her, but claimant is not able to work because of her medical condition.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective March 17, 2019. Benefits are withheld beginning on that date.

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. Emp't Appeal Bd.*, 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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Inasmuch as the illness or injury was not work-related and the claimant has been unable to return to work because of her medical condition, 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, and she is able to demonstrate that she is capable of working full-time at her assigned place of work.

DECISION:

The decision of the representative dated April 16, 2019, (reference 04) is reversed. The claimant is not able to work and available for work, effective March 17, 2019. Claimant is not eligible to receive unemployment insurance benefits, effective March 17, 2019.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn