

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LAUREL M GRAY

Claimant

IA DEPT OF HUMAN SVCS/GLENWOOD

Employer

APPEAL 14A-UI-03565-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/16/14

Claimant: Appellant (2)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 27, 2014, (reference 02) unemployment insurance decision that denied benefits based upon an inability to perform work as of February 16, 2014. The parties were properly notified about the hearing. A telephone hearing was held on April 24, 2014. Claimant participated. Employer participated through human resources assistant, Krista Ellis and PSE 1 Darlene Lovato. Sandra Linsin of Employers Edge represented the employer. Pam Stipe and Diana Fayers observed. Employer's Exhibit 1 was received. Department's Exhibit D-A was received. (Note: This document was barely legible. In the event of an appeal, a more legible copy will be required for the official record.)

ISSUE:

Is the claimant able to and available for work effective February 16, 2014?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed part time as a residential treatment worker (RTW) and then activities aide, both of which include rather heavy job duties. She had been employed since 1980 for 36 years and was discharged from the employment on August 2, 2013. She had a work-related hip injury accident on April 10, 2013. Her last day of work was a half day on August 1, 2013. On December 13, 2013, she had a Functional Capacity Evaluation (FCE) that noted a valid effort put forth to handle a medium demand occupation and could perform the following job activities: waist to floor lifting, 30 pounds occasionally from below knee level and 50 pounds occasionally lifting from knee level or above; waist to crown lifting of 40 pounds occasionally; carrying 30 pounds occasionally; sitting, standing, walking frequently with positional changes; kneeling, squatting and climbing occasionally with mechanical support; and forward bending frequently. The examiner opined that claimant could not meet the job demands she had held with the employer. (Department's Exhibit D-A) Orthopedic Surgeon Daniel McGuire, M.D. found she had reached maximum medical improvement (MMI) on February 6, 2014, and assigned permanent restrictions. He did not say anything about what other jobs she can do but she is looking for post office, grocery, florist, beauty shop, and newspaper 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 effective February 16, 2014.

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".

871 IAC 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.

Inasmuch as the medical condition was work-related and the treating physician has released the claimant to return to work, she has established her ability to work. At the point where she was discharged for not being able to perform the essential functions of her job, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. Although she has only held these two jobs during her work history, there are other less skilled, less physically demanding jobs that she would be qualified to perform given her restrictions. Thus the claimant is considered as able to work as of February 16, 2014.

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 representative's decision dated March 27, 2014, (reference 02) is reversed. The claimant is able to work and available for work effective February 16, 2014. Benefits are allowed, provided she is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css

NOTE TO CLAIMANT:

This site has basic information about Social Security Disability Insurance benefits.
<http://www.socialsecurity.gov/pgm/disability.htm>