

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**BETTY B DWEH**  
Claimant

**APPEAL NO. 25A-UI-02895-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHNSTON HOSPITALITY LLC**  
Employer

**OC: 01/12/25  
Claimant: Respondent (1R)**

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Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

On April 14, 2025, the employer filed a timely appeal from the April 9, 2025 (reference 03) decision that allowed unemployment insurance benefits for the period beginning March 2, 2025, provided the claimant was otherwise eligible and held that the employer's account could be charged for benefits, based on the IWD deputy's conclusion that the claimant was able to work and available work but that the employer was not providing the same pattern of employment as in the base period. After due notice was issued, a hearing commenced on May 1, 2025, was rescheduled due to the need for a Krahn-English interpreter, and concluded on May 15, 2025. Betty Dweh (claimant) participated and presented additional testimony through Tim Hall. Andy Woodrick represented the employer. Loretta York, Krahn-English interpreter, assisted with the May 15, 2025 hearing. Exhibits 1, 2 and A were received into evidence. The administrative law judge took office notice of the fact-finding materials, labeled with page numbers 1 through 37 and of the IWD TN3270 records, labeled pages 38 and 39. The TN3270 records included DBRO, KCCO, WAGE-A and NMRO. During the May 15, 2025 hearing, the administrative law judge took official notice of the updated DBRO records that reflected additional weekly claims through the week that ended May 10, 2025.

**ISSUES:**

Whether the claimant has been able to work and available for work during the period beginning March 2, 2025.

Whether the employer's account may be charged for benefits for the period beginning March 2, 2025.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds:

Betty Dweh (claimant) established an original claim for unemployment insurance benefits was effective January 12, 2025. Iowa Workforce Development (IWD) set the weekly benefit amount at \$267.00. Once Ms. Dweh established the original claim, she did not immediately commence

making weekly claims. Ms. Dweh made weekly claims for the weeks ending February 1, February 8 and February 15, 2025 and then discontinued weekly claims.

Iowa Workforce Development has at all relevant times categorized Ms. Dweh as a Group 3, job-attached, claimant.

Ms. Dweh established an “additional claim” for benefits that was effective March 2, 2025. The present appeal number concerns the period involved in the “additional claim.”: Ms. Dweh has continued to make consecutive weekly claims for benefits, beginning with the a claim for the week ending March 8, 2025. For the week ending March 8, 2025, Ms. Dweh reported earning \$48.00 in wages, which represented three hours of work. For each of the eight weeks between March 9, 2025 and May 3, 2025, Ms. Dweh reported zero wages. For the week that ended May 10, 2025, Ms. Dweh reported earning \$160.00 in wages, which represented 10 hours of work. IWD paid \$267.00 in unemployment insurance benefits to Ms. Dweh for each of the nine weeks between March 2, 2025 and May 3, 2025. IWD paid Ms. Dweh \$173.00 in reduced benefits for the week that ended May 10, 2025, which reflected a deduction of the earned wages that exceeded one-fourth of the weekly benefit amount.

Johnston Hospitality, L.L.C., doing business as GrandStay Hotel & Suites, located in Johnston, is Ms. Dweh’s current employer and is a base period employer. Ms. Dweh’s hourly wage has at all relevant times been \$16.00 an hour. Ms. Dweh’s quarterly wages (rounded to the nearest whole dollar amount), pursuant to the required employer quarterly wage reports, and averaged weekly wages (rounded to the nearest whole dollar amount) and averaged weekly work hours, have been as follows:

<u>Quarter</u>	<u>Wages</u>	<u>Ave. Weekly Wages</u>	<u>Ave. Weekly Work Hours</u>
2024/3	\$4,311.00	\$332.00	20.75
2024/4	\$4,804.00	\$367.00	22.94
2025/1	\$1,061.00	\$82.00	5.13

The employer pays wages twice monthly. Ms. Dweh produced for the fact-finding interview paystubs and a pay summary document that together reflect work hours from July 2024 to the end of 2024 as follows:

<u>Pay Period</u>	<u>Number of Hours Worked</u>
7/16 to 7/31	52.28
8/1 to 8/15	62.42
8/16 to 8/31	70.15
9/1 to 9/15	75.42
9/16 to 9/30	35.87
10/1 to 10/15	44.65
10/16 to 10/31	67.38
11/1 to 11/15	67.68
11/16 to 11/30	49.18

12/1 to 12/15	35.50
12/16 to 12/31	27.00

See fact-finding materials, pages 26-37.

Ms. Dweh began her employment with GrandStay in July 2024, before the hotel opened for business. Ms. Dweh was hired as a part-time housekeeper and laundry attendant. Prior to the hotel's opening in September, the employer had Ms. Dweh assist with deep cleaning the hotel in preparation for the opening. Once the hotel opened, Ms. Dweh was primarily responsible for laundry, which included doing the laundry, folding the laundry, and cleaning the laundry room. Anna Taylor, Assistant General Manager, has at all times been Ms. Dweh's immediate supervisor.

On August 21, 2024, Ms. Dweh hurt her right wrist at work. Ms. Dweh is right-handed. Ms. Dweh had been supporting her weight on her wrist while she was up on a table cleaning a TV. As she was getting down off the table, she "rolled" her wrist and experienced a sudden pain in her wrist. The employer had Ms. Dweh ice her wrist. The pain persisted and this prompted Ms. Dweh to seek medical evaluation on her own at Broadlawns Medical Center Urgent Care on August 21, 2024. The medical provider ordered an x-ray of Ms. Dweh's wrist that indicated the wrist was not fractured. The medical provider expressed concern regarding a possible scapholunate ligament tear and recommended further evaluation to include an MRI. The medical provider diagnosed Ms. Dweh as having a wrist sprain and wrist pain. The medical provider prescribed prescription strength naproxen to be taken as needed for pain. The medical provider directed Ms. Dweh to add Tylenol as needed, to wear a wrist splint as needed, and to follow up with her primary care doctor in a few weeks. See fact-finding materials, pages 3-7 and page 21.

On September 27, 2024, Ms. Dweh returned to Broadlawns Urgent Care on September 27, 2024 to obtain a medical note restricting her to light-duty work. The medical provider reiterated the diagnosis of a wrist sprain and wrist pain, the concern of a possible scapholunate ligament tear, and that an MRI was recommended. The medical provider referred Ms. Dweh for an orthopedic consult, which was scheduled for October 17, 2025. The medical provider indicated the need for a work release note indicating a need for light-duty work that would allow Ms. Dweh to wear a wrist brace until she could be evaluated by the orthopedist. See fact-finding materials, pages 8-11.

On October 30, 2024, Ms. Dweh participated in the Broadlawns orthopedic consult. Ms. Dweh underwent a wrist x-ray that referenced the wrist pain but that again concluded there was no fracture. The provider recommended that Ms. Dweh undergo an MRI. See fact-finding materials, pages 12-15.

The employer's worker's compensation carrier did not acknowledge Ms. Dweh's wrist injury as a worker's compensation matter until on or about January 7, 2025, after Ms. Dweh had enlisted the services of a worker's compensation attorney.

On February 26, 2025, Ms. Dweh returned to Broadlawns for the MRI that had been recommended since August 2024. The MRI revealed "a perforation of the central membranous portion of the scapholunate ligament ... extending through the scapholunate joint from the radiocarpal joint into the midcarpal row." The MRI revealed "a full-thickness tear of the membranous portion of the central TFC [triangular fibrocartilage complex] with communication between the radiocarpal joint and distal radial ulnar joint..." See fact-finding materials, page 17.

On March 3, 2025, the medical provider provide a medical restrictions note that stated, "Patient is to only use left arm for work until patient can be re-evaluated by new orthopedic hand surgeon." See fact-finding materials, page 20.

On March 31, 2025, Ms. Dweh participated in an orthopedic consult with Iowa Ortho. The medical provider diagnosed a tear of the right scapholunate ligament, complex tear of triangular fibrocartilage of the right wrist, as well as stiffness and pain. Due to delay since the initial injury, the orthopedist recommended against aggressive intervention and recommended occupational hand therapy. The medical provider indicated that once Ms. Dweh regained range of motion and function, there would be further discussion regarding ligament treatment options. The provider indicated a risk of developing SLAC wrist due to the scapholunate ligament rupture, which would require further treatment. The medical provider recommended that Ms. Dweh consider her options while she was undergoing occupational hand therapy and advised that the options included surgical reconstruction of the scapholunate ligament or more conservative management. The orthopedist provided a Patient Status Report document indicating Ms. Dweh should not use her right hand and was to follow up with the orthopedist in two weeks. Importantly, the orthopedist tied the wrist injury to the August 21, 2024 workplace injury, as follows: "Within reasonable medical certainty, I can directly contribute the injury sustained on 8/21/24 to the scapholunate ligament rupture...Permanent impairment is yet to be determined as she had not yet reached MMI." See fact-finding materials, pages 21-24 and Exhibit 2.

On April 28, 2025, the orthopedist with Iowa Ortho eased the medical restriction to Ms. Dweh's right wrist to allow her to lift no more than five pounds.

After Ms. Dweh worked three hours for the employer on March 8, 2025, the employer took the position that it had no more work for Ms. Dweh so long as she was without use of her right hand. Prior to that time, the employer had at the worker's compensation carrier's urging provided reduced hours of light-duty work. The work included cleaning restrooms, tables and the laundry room. Ms. Dweh struggled to perform the work without use of her right hand but performed the work the employer had available within her medical restrictions. Between March 8 and 11, 2025, the employer removed the claimant from the work schedule. The employer continued to take the position that there was no work for Ms. Dweh until receipt of the updated medical restriction document that was issued on April 28, 2025.

At the worker's compensation carrier's urging, the employer contacted Ms. Dweh on May 7, 2025 to have her return to work under reduced hours of light-duty work during the week that ended May 10, 2025. The employer provided 10 hours of work during that week. The employer had Ms. Dweh clean tables, sweep and mop floors, and fold clothes.

## **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.4(3)(a) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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 Administrative Code rule 87124.15 provides as follows:

Benefit eligibility conditions. To be eligible to receive benefits, the individual bears the burden of establishing, and the department must find, 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.

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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, fulltime endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(2) Available for work. The availability requirement is satisfied when an individual is genuinely attached to the labor market (e.g. the individual is willing, able, and ready to accept suitable work that the individual does not have good cause to refuse). Under unemployment insurance laws, it is the availability of an individual who is tested, and the labor market is therefore described in terms of the individual. A labor market for an individual means a market for the type of service the individual offers in the geographical area in which the individual offers the service. It does not mean that job vacancies must exist. It means only that the type of services that an individual is offering is generally performed in the geographical area in which the individual is offering the services. ...

Iowa Administrative Code rule 87124.16(1) provides:

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

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

...

(6) If an individual has a medical report on file submitted by a physician or a physician assistant, stating the individual is not presently able to work.

If a claimant individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. Iowa Code section 96.7(2)(a)(2)(a).

An employer has an obligation to provide an employee with reasonable accommodations that enable the employee to continue in the employment. See *Sierra v. Employment Appeal Board*, 508 N.W. 2d 719 (Iowa 1993).

The weight of the evidence establishes that Ms. Dweh has been medically able to work with reasonable accommodations and has been available for work with the employer with reasonable accommodations since she established the March 2, 2025 additional claim for benefits. Ms. Dweh's need for reasonable accommodations was caused by the August 21, 2024 workplace injury and by the employer's delayed recognition of the matter as a worker's compensation matter, with corresponding delay in medical intervention such as the delayed MRI. Since March 2, 2025, the employer had not provided the same pattern of employment as in the base period. Ms. Dweh is eligible for benefits for the period beginning March 2, 2025, provided she is otherwise eligible. The employer's account may be charged for benefits for the period beginning March 2, 2025.

**DECISION:**

The April 9, 2025 (reference 03) decision is AFFIRMED. Since March 2, 2025, the claimant has been able and available for work within her work-injury related medical restrictions, but the employer has not provided the same pattern of employment as in the base period. The claimant is eligible for benefits for the period beginning March 2, 2025, provided she is otherwise eligible. The employer's account may be charged for benefits for the period beginning March 2, 2025.

**REMAND:**

This matter is REMANDED to Iowa Workforce Development Benefits Bureau for determination of whether the claimant has received worker's compensation benefits for the period beginning March 2, 2025 that are deductible from her unemployment insurance benefits.



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James E. Timberland  
Administrative Law Judge

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May 21, 2025  
Decision Dated and Mailed

JET/jkb

**APPEAL RIGHTS.** If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Note to Parties:** YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

**Note to Claimant:** It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**DERECHOS DE APELACIÓN.** Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board  
6200 Park Ave Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

**UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:**

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**Nota para las partes:** USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

**Nota para el reclamante:** es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

**SERVICIO DE INFORMACIÓN:**

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.