

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LISA K RAUE
Claimant

APPEAL NO. 15A-UI-05797-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KEYSTONE SENIOR MANAGEMENT
Employer

OC: 04/12/15
Claimant: Appellant (4/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Lisa Raue filed a timely appeal from the May 6, 2015, reference 02, decision that denied benefits effective April 12, 2015, based on an Agency conclusion that she was unable to perform work due to injury. After due notice was issued, a hearing was started on July 7, 2015, continued on July 9, 2015, and concluded on July 22, 2015. Claimant Lisa Raue participated and presented additional testimony from David Kamberling. Mary Jo Pipkin represented the employer and presented additional testimony through Amber Gauthier and Barb Sturgeon. The hearing in this matter was consolidated with the hearing in appeal number 15A-UI-05795-JTT. The administrative law judge took official notice of the Agency's record of benefits disbursed to the claimant and received Exhibits 2 through 11 and A through K into evidence. The administrative law judge took official notice of the Agency's administrative record of the claimant's weekly claims for benefits (KCCO) and of the Agency's administrative record (DBRO) indicating that no benefits have been disbursed to the claimant thus far.

ISSUES:

Whether the claimant has been able to work since April 12, 2015.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Lisa Raue established a claim for benefits that was effective April 12, 2015. Ms. Raue's most recent employer is Keystone Senior Management, where Ms. Raue worked as a full-time resident aide. Ms. Raue last performed work for that employer on October 17, 2014. On that day, Ms. Raue suffered a workplace injury to her right knee. The injury aggravated pre-existing osteoarthritis in both of Ms. Raue's knees. Ms. Raue had been experiencing problems with both knees leading up to the workplace injury on October 17, 2014. As a result of the workplace injury, Ms. Raue was off work and incapacitated. Ms. Raue underwent surgery on her right knee on January 5, 2015. Ms. Raue continued to be largely incapacitated and was unable to work until May 12, 2015, when her surgeon released her to return to work without restrictions. Prior to May 4, 2015, Ms. Raue was without ready access to a phone that she could use to make or receive telephone calls. Once Ms. Raue filed her claim for benefits, she commenced making weekly

claims for benefits. In connection with those claims, Ms. Raue consistently reported that she had made two job contacts, even while she had been incapacitated.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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) and (35) provide:

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.

(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.

The weight of the evidence indicates that Ms. Raue was unable to work due to injury prior to being released by her doctor to return to work without restrictions effective May 12, 2015. Ms. Raue did not meet the work ability requirement for the period of April 12, 2015 through the benefit week that ended May 9, 2015 and is not eligible for benefits for that period. Effective

May 12, 2015, Ms. Raue met the work ability requirement and was eligible for benefits, provided she met all other eligibility requirements.

Given the complexity of the consolidated appeal hearing, the administrative law judge did not solicit, and Ms. Raue did not present, sufficient evidence regarding her work searches. The administrative law judge concludes that this matter should be remanded to the Benefits Bureau for consideration of Ms. Raue's work search and *availability* for work effective May 12, 2015.

DECISION:

The May 6, 2015, reference 02, decision is modified as follows. The claimant was unable to work during the period of April 12, 2015 through May 11, 2015 and is, therefore, ineligible for benefits for the period of April 12, 2015 through the benefit week that ended May 9, 2015. Effective May 12, 2015, the claimant was able to work and was eligible for benefits, provided she meets all other eligibility requirements.

This matter is remanded to the Benefits Bureau for consideration of the claimant's work search and *availability* for work effective May 12, 2015.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css