

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY S PFEIFER
Claimant

APPEAL NO. 09A-UI-00881-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**BURLINGTON AREA
HOSPITALITY GROUP LLC**
Employer

**OC: 12-07-08 R: 04
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 20, 2009, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on February 11, 2009. The claimant did participate. The employer did participate through Christy Pfeiffer, General Manager, and (representative) Theresa Tripp, Human Resources Manager.

ISSUE:

Is the claimant able to and available to work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a banquet server in December 2008. She was approximately eight months pregnant when she told her supervisor that she was no longer able to carry heavy plates or trays due to her pregnancy. Her doctor told her only to do what she was comfortable doing and the claimant as of December 19 did not feel able to perform all of her job duties. When she reported to her supervisor that she could no longer carry heavy objects or perform all of the duties of her job, her supervisor would not find other job duties for her. The claimant gave birth to her baby on January 29, 2009 and does not anticipate being released to return back to work by her physician for at least another four weeks.

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 December 19, 2008.

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".

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.

871 IAC 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 physician and has not been released as being able to work.

Inasmuch as the pregnancy was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established ability to work. The employer is not obligated to accommodate work restrictions either physician- or employee-imposed due to pregnancy. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The representative's decision dated January 20, 2009, reference 01, is affirmed. The claimant is not able to work and available for work effective December 19, 2008. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw