

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HEATHER A POKORNEY**  
Claimant

**APPEAL NO. 12A-UI-13917-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY INTELLIGENT STAFFING INC**  
Employer

**OC: 06/03/12**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(1) – Unable to Work/Pregnancy

**STATEMENT OF THE CASE:**

The claimant appealed from a representative's decision dated November 19, 2012, reference 04, that held she was not eligible for benefits effective October 28, 2012 because she was unable to work due to pregnancy. A hearing was held on December 20, 2012. The claimant participated. The employer did not participate.

**ISSUE:**

The issue is whether claimant is able and available to work.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant accepted a full-time work assignment at Associated Materials (Alside) beginning June 26, 2012. She worked as a QA line inspector and she moved to different lines as needed.

On October 28 her doctor put a 50-pound lifting restriction on her work activity due to pregnancy. She provided the statement to the employer and a representative notified Associated Materials (business client). Although the claimant did not have to lift the weight stated in her work restriction, the employer could not convince the client to allow claimant to work. Claimant adds there are lines she could have worked that would not have violated the restriction and others where two people were used to lift objects onto a roller that would be no problem.

When the employer told claimant she could no longer work the assignment, it had nothing else to offer to her at that time. There has been no change regarding the lifting restriction or any new restriction as of the date of this hearing. Claimant considers that she is still employed by the employer.

The employer failed to respond to the hearing notice.

**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 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 24.23(1) provides:

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.

The administrative law judge concludes that claimant is able and available to perform work and is eligible for benefits effective October 28, 2012.

The pregnancy weight lifting restriction did not affect claimant's job for the employer client that she could have continued to perform. There was no lifting required on the line where claimant was last assigned to work and she could have had some other person assist her if she moved to other lines.

**DECISION:**

The decision of the representative dated November 29, 2012 reference 04 is reversed. The claimant is able and available for work and eligible for benefits effective October 28, 2012.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs