

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**CAROL A ZIESER**  
Claimant

**FULL CIRCLE SERVICES INC**  
Employer

**APPEAL NO. 14A-UI-09775-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/17/14**  
**Claimant: Appellant (1)**

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Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated September 9, 2014 reference 03, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 15, 2014. Claimant participated personally. Employer participated by Matt Archibald, with witness Courtney Kemmerer.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was off on maternity leave in this matter from June 15, 2014 until September 1, 2014. When claimant returned to work she was informed that she would be working with a different individual than she had previously assisted.

Claimant was given a choice of multiple individuals that she was to give assistance. None of the new individuals would have required claimant to travel a distance of over three additional miles than she had already been driving for the previous client. Claimant chose to decline to take on any of the new clients as they would have been an inconvenience for claimant with her daycare for her young baby.

**REASONING AND CONCLUSIONS OF LAW:**

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 § 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(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 medical practitioner and has not been released as being able to work.

Inasmuch as the pregnancy was not work related and the treating physician has released the claimant to return to work, the claimant has established the initial ability to work. But claimant has not established that she is available to work the times and area when and where she had previously been employed. Benefits are withheld until such time as the claimant shows that she is willing to work in the same area, at or around the same time when she was initially employed.

**DECISION:**

The decision of the representative dated September 9, 2014, reference 03 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective August 17, 2014.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

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