

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DEBORA FIELDS
5836 AVE O LOT 130
FT MADISON IA 52627

FAMILY DOLLAR STORES OF IOWA INC
STORE #1424
c/o TALX UCM SERVICES INC
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-12225-BT
OC: 10/30/05 R: 04
Claimant: Appellant (4/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

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.

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.

YOU MAY REPRESENT yourself in this appeal or you may 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. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Debora Fields (claimant) appealed an unemployment insurance decision dated December 1, 2005, reference 02, which held that she was not eligible for unemployment insurance benefits because she is not able and available to work for Family Dollar Stores of Iowa (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2005. The claimant participated in the hearing. The employer participated through Lorrie Park, District Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was under work restrictions from a non-work-related medical injury and was disqualified as of October 30, 2005. She was medically released without restriction as of December 5, 2005.

The claimant has subsequently separated from her employment on December 9, 2005 but this issue has yet to be adjudicated.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work as of December 5, 2005.

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.

The claimant admitted she was under work restrictions from a non-work-related medical condition. However, she was given a full medical release as of December 5, 2005. The claimant currently meets the able and available requirements. She qualifies for benefits as of December 10, 2005, provided she is otherwise eligible.

The separation issues were not included in the Notice of hearing for this case, and the case will be remanded for an investigation and determination on those issues.

DECISION:

The unemployment insurance decision dated December 1, 2005, reference 02, is modified in favor of the appellant. The claimant is able and available for work as of December 5, 2005. She qualifies for benefits as of December 10, 2005, provided she is otherwise eligible. This case is remanded to the Claims Section for further determination.

sdb/kjf