

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARA M THOMAS
Claimant

APPEAL NO. 10A-UI-02216-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES**
Employer

OC: 12/06/09
Claimant: Appellant (5-R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Sara Thomas filed a timely appeal from the January 22, 2010, reference 01, decision that denied benefits based on an agency conclusion that she was on an approved a leave of absence. After due notice was issued, a hearing was held on March 29, 2010. Ms. Thomas did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Lori Sander, Staffing Specialist, represented the employer.

ISSUE:

Whether the claimant has been able to work and available for work since establishing her claim for benefits.

Whether the claimant is on a negotiated leave of absence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sara Thomas started getting work assignments through Manpower Temporary Services in April 2007 and last performed work for the employer in a full-time temporary work assignment on December 3, 2009. At that point, Ms. Thomas notified the employer that her doctor had taken her off work entirely in connection with a pregnancy. The employer continued to have work for Ms. Thomas in the assignment. Ms. Thomas was not eligible for a leave of absence. Thus, when Ms. Thomas notified the employer she needed to leave the assignment before it was completed, the employer considered Ms. Thomas to have separated from the employment, but eligible to apply for further work assignments once she was able to return to work. Ms. Thomas made no further contact with the employer. The employer made a couple of attempts to contact Ms. Thomas to see whether she was available for further work assignments, but the employer did not hear back from Ms. Thomas.

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 24.22(1)a, (22) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

871 IAC 24.23 states, in relevant part, as follows:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

24.23(1) An individual who is ill and presently not able to perform work due to illness.

24.23(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.

Ms. Thomas did not participate in the appeal hearing she requested and thereby failed to present any evidence whatsoever to establish that she has been able to work and available for work since she established her claim for unemployment insurance benefits. Ms. Thomas had a burden to prove those things and did not meet her burden. The weight of the evidence indicates that Ms. Thomas has not been able or available for work since she established the claim for benefits that was effective December 6, 2009. Benefits are denied effective that date.

The evidence in the record raises the question of whether there has been a permanent separation from the employment. That issue was not decided as part of the January 22, 2010, reference 01 decision, not included on the notice for the appeal hearing, and therefore not before the administrative law judge. This matter will be remanded to the Claims Division for determination of whether there was a permanent separation from the employment and the impact of that separation on the claimant's eligibility for unemployment insurance benefits.

DECISION:

The Agency representative's January 22, 2010, reference 01, is modified as follows. The claimant has not been able and available for work since establishing her claim for benefits. Effective December 6, 2009, the claimant is not eligible for benefits.

This matter is remanded to the Claims Division for determination of whether there was a permanent separation from the employment and the impact of that separation on the claimant's eligibility for unemployment insurance benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs