

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA L BEDFORD
Claimant

WEBSTER CITY CUSTOM MEATS INC
Employer

APPEAL NO. 18A-UI-03911-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 20, 2018 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on April 23, 2018. Claimant participated personally and with witness Theresa Bedford. Employer participated by Constance Ingraham. Claimant's Exhibit A and Employer's Exhibits 1-5 were admitted into evidence.

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 is pregnant. As a result of claimant's age, her pregnancy is high risk. Shortly before claimant's pregnancy, she moved from part time to full time work. Claimant filed for and received FMLA on October 16, 2017. Claimant's doctor requested that claimant be moved to work of no more than six hours a day, and lifting no more than 25 pounds. Claimant's job involved standing all day and moving hams of nearly 25 pounds.

Claimant exhausted her FMLA on February 24, 2018. On March 1, 2018, claimant brought to employer a new doctor's note stating claimant was not to lift any weight and was to be allowed to frequently sit. Claimant could no longer do the job for which she was hired with these restrictions.

Claimant stated that she'd intended to quit work in April to prepare for her upcoming pregnancy.

Claimant presented a document to the administrated law judge that was prepared by her doctor indicating that she is able to lift 10 pounds and work as long as she can have frequent rest breaks to sit.

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 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".

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.

Inasmuch as the pregnancy was not work-related and the treating physician has not released the claimant to return to work without restrictions that would allow claimant to do the job for which she was hired, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The decision of the representative dated March 20, 2018, reference 01 is affirmed. Claimant is not eligible to receive unemployment insurance benefits as she is not able and available for work.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn