

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

KELLY K BERRYMAN
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CEDAR RAPIDS IA 52403

J C PENNY CORPORATION INC
C/O M/S 1201
PO BOX 650486
DALLAS TX 75265-0486

Appeal Number: 04A-UI-00536-BT
OC: 08/10/03 R: 03
Claimant: Appellant (1)

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:

Kelly Berryman (claimant) appealed an unemployment insurance decision dated January 7, 2004, reference 03, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with J. C. Penny Corporation, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2004. The claimant participated in the hearing. The employer participated through Pam Langton, Human Resources.

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 hired as a part-time stocker on October 22, 2003. The claimant went on a medical leave of absence on November 15, 2003. She was not released without restrictions until January 19, 2004. The claimant is currently attending school and can only work if the hours do not conflict with her school schedule.

REASONING AND CONCLUSIONS OF LAW:

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

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), (5), (10) provide:

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.
- (5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.
- (10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant went on a non-work-related medical leave of absence on November 15, 2003. She was not released to return to work without restrictions until January 19, 2004. She was therefore not available to work until that same date. Subsequent to that date, the claimant has restricted her job hours only if they work around her school schedule. The claimant is not available and is therefore not eligible for benefits.

DECISION:

The unemployment insurance decision dated January 7, 2004, reference 03, is affirmed. The claimant is not available for work and benefits are denied.

sdb/kjf