

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LESSLY B CASSADY**  
Claimant

**APPEAL NO. 11A-UI-13628-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 07/17/11  
Claimant: Appellant (2-R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 11, 2011 (reference 04) decision that denied benefits as of August 14, 2011. After due notice was issued, a hearing was held by telephone conference call on November 10, 2011. Claimant participated.

**ISSUE:**

The issue is whether claimant is able to and available for work effective July 27, 2011.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full time as an office worker at a towing service and was separated from employment on July 14, 2011. That separation has not yet been determined at the fact-finding level beyond the reference 01 representative's decision about claimant's ability to work. Brandon Mitchell PAC wrote on July 27 that claimant may work three to four daytime hours and can sit for 45 minutes of an hour and stand for 15 minutes of an hour. He is unable to drive but has transportation available to him to get to work. He is applying for part-time office work and other jobs that fit his restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

871 IAC 24.22(2) 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.

(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 24.22(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.

Although claimant may not be able to perform his most recent job duties, he is able to perform part-time office work, which he has done in his work history. Accordingly, benefits are allowed.

**DECISION:**

The October 11, 2011 (reference 04) decision is reversed. The claimant is able to work and available for work effective July 27, 2011. Benefits are allowed.

**REMAND:** The July 14, 2011 separation issue for Greenslade Towing (account number 336061) delineated in the findings of fact is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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