

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMELLA S BAILEY
Claimant

APPEAL NO. 12A-UI-02916-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TWINN CITY TANNING WATERLOO LLC
Employer

OC: 01/22/12
Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated January 22, 2012, reference 03, which held that the claimant was not eligible to receive unemployment insurance benefits effective January 22, 2012. After due notice, a telephone conference hearing was scheduled for and held on April 6, 2012. The hearing could not be completed at that time and was rescheduled for April 24, 2012. The claimant participated. The employer participated Merle Wilson, plant manager; Pat Langan, corporate human resources; and Rusty Truax, floor supervisor. The record consists of the testimony of Samella Bailey; the testimony of Merle Wilson; the testimony of Pat Langan; and Claimant's Exhibit A. Rusty Truax did not testify.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer tans and splits cowhides and sells the product to customers for further use in manufactured goods. The claimant was hired on July 27, 2011, as a collagen trimmer. She was a full time employee.

The claimant became pregnant after she started her job with the employer. On January 10, 2012, she was seen by her family physician, Ronald D. Flory, who imposed restrictions on her work. She was able to return to work on January 11, 2012, with restrictions of no lifting over 35 pounds and no twisting or bending more than one hour a day through July 2012. (Exhibit A) The claimant established a claim for unemployment insurance benefits with an original claim date of January 22, 2012. The claimant filed for unemployment benefits because the employer informed her that there was no job available within these restrictions. The claimant also filed for short-term disability.

The claimant did not work from the time she established her claim until she was returned to work on March 5, 2012. The employer had worked with the claimant's doctors to clarify restrictions and identify tasks that she could do. The claimant was unable to physically do some of the jobs that she had been assigned and she went back to her doctor. She was told she had a ruptured disc and on April 2, 2012, she was given new restrictions. She was restricted from lifting and reaching no more than 35 pounds for 4 hours a day. She could not twist or bend at any time. The employer could not accommodate these restrictions. The claimant could not identify any jobs that she could do with these restrictions other than sitting down and shredding old files or making copies. She also mentioned cooking at McDonalds, although she had never done this type of work before. The claimant does not have any office skills.

REASONING AND CONCLUSIONS OF LAW:

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 claim in this case was established on January 22, 2012. The claimant had presented her employer with a set of restrictions that the employer initially did not accommodate. The claimant was paid some accumulated vacation and personal time off and also applied for short-term disability. The employer then informed the short-term disability insurance carrier that there was a job for the claimant and she was put back to work on March 5, 2012. Although the claimant did have some physical restrictions as of January 10, 2012, these restrictions were not so onerous that the claimant could not have worked at all. The employer was eventually able to accommodate those restrictions. The claimant is considered able and available for work from January 22, 2012, through March 4, 2012.

The restrictions imposed on April 4, 2012, were far more severe and effectively eliminated the claimant's physical ability to work, especially when combined with her very limited office skills. The claimant was unable to twist or bend at all and her lifting and reaching were also restricted to four hours a day. The claimant testified she was told she had a ruptured disc and was going to see a specialist for her back. The claimant could not list any jobs that she could do other than shredding files or making copies. The claimant also suggested she might cook at McDonalds, even though she had no experience cooking. The claimant did not feel that she would have to bend or twist while cooking, which seems unlikely, and she did not explain how she would be able to stand for any extended period of time. The claimant's physical restrictions, when combined with her limited work skills, lead the administrative law judge to conclude that the claimant was not able and available for work effective April 4, 2012.

DECISION:

The representative's decision dated March 19, 2012, reference 03, is modified in favor of the appellant. The claimant is able and available for work from January 22, 2012 through March 4, 2012. She is not able and available for work effective April 4, 2012. All other eligibility requirements must be met.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw