

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE B RAMEY
Claimant

APPEAL NO. 09A-UI-00503-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YOUTH & SHELTER SERVICES INC
Employer

OC: 11/02/08 R: 02
Claimant: Appellant (2)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Ms. Jamie Ramey filed an appeal from a representative's decision dated January 7, 2009, reference 01, which denied benefits effective November 2, 2008 finding that the claimant was not able to perform work due to injury. After due notice, a telephone conference hearing was scheduled for and held on January 28, 2009. The claimant participated personally. The employer participated by Cheryl Baker, Human Resource Manager. Employer's Exhibits One, Two, Three and Four and Claimant's Exhibit A were received into evidence.

ISSUE:

The issue is whether the claimant is able and available to work in gainful employment.

FINDINGS OF FACT:

The administrative law judge having heard the testimony and considered all of the evidence in the record, finds: The claimant last worked for Youth & Shelter Services Inc. on February 25, 2008. At that time the employer had no further light-duty work available for the claimant. Ms. Ramey had a workmen's compensation claim and was under the care of one or more medical practitioners. The claimant underwent knee replacement surgery.

Ms. Ramey opened a claim for unemployment insurance benefits effective November 2, 2008 and received the customary informational and instructional brochure and pamphlets which explained the unemployment compensation system and its requirements. On October 22, 2008, the claimant's physician determined that although the claimant was able to work some restrictions should be imposed. The claimant was advised to avoid repetitive twisting, stooping, bending, climbing, kneeling or squatting. The claimant was determined to be able to work for four to eight hours daily. (See Exhibit One).

Ms. Ramey has actively sought reemployment by contacting perspective employers personally each week that she claimed benefits and is actively attempting to find gainful employment although not necessarily in her previous or customary occupation. The claimant has been determined to be unable to return to her previous position by Youth & Shelter Services Inc. as

her limitations did not allow her to climb stairs and perform other tasks necessary for a night house manager. Ms. Ramey is not engaged in self-employment and has placed no unreasonable limitations on the type of employment that she is willing accept. The claimant has not entered into or agreed to a mutually agreed leave of absence.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Ramey is able to work and available for work. It does.

The evidence in the record establishes that the claimant has been released to return to full-time work by her physician as of October 22, 2008. Although the claimant has some restrictions on the type of work that she can accept, the claimant is physically and mentally able to work in gainful employment although not in her previous or customary occupation. The claimant is able to work and has actively sought employment in the types of employment engaged in by others as a means of livelihood.

The evidence in the record establishes that the claimant is not only on a mutually agreed leave of absence, is not self-employed unreasonably limiting herself from gainful employment. The claimant actively and earnestly seeks work by contacting perspective employers each week that she has claimed benefits.

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 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.

For the reasons stated herein the administrative law judge concludes that the claimant is able and available for work effective November 2, 2008 and is eligible to receive unemployment insurance benefits providing that she meets all eligibility requirements of the law.

DECISION:

The representative's decision dated January 7, 2009, reference 01, is reversed. The claimant is able and available for work and eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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