

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROXANNE M MCCULLOUGH
Claimant

APPEAL NO: 17A-UI-11981-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY DOLLAR SERVICES INC
Employer

**OC: 10/15/17
Claimant: Appellant (2-R)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 13, 2017, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 12, 2017. The claimant participated in the hearing. The employer did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time repack order filler for Family Dollar Services from March 2017 to October 15, 2017. The claimant learned she was pregnant and went to her doctor who placed her on restrictions of a break every two hours, no lifting over 10 pounds, and no strenuous bending or lifting. She presented the note to the employer and was told the employer did not have any further work for her. The claimant has accepted a part-time job at Flapjacks Family Restaurant.

The issue of the claimant's separation from Family Dollar Services has not yet been heard or adjudicated by the Claims Sections.

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".

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.

Iowa Admin. Code r. 871-24.22(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.

The claimant has separated from her employment with Family Dollar Services. Consequently, whether she is able and available for work does not need to be decided in terms of that employment. While the claimant was not able to perform her previous job with Family Dollar

Services, she is currently working part-time for a restaurant and clearly is able to perform some type of work as required by Iowa Code section 96.4-3. Accordingly, the claimant is considered able and available for work. Benefits are allowed.

The issue of the claimant's separation from employment with Family Dollar Services is remanded to the Claims Section for an initial investigation and determination.

DECISION:

The November 13, 2017, reference 04, decision is reversed. The claimant is able to work and available for work effective October 15, 2017. Benefits are allowed. The issue of the claimant's separation from employment with Family Dollar Services is remanded to the Claims Section for an initial investigation and determination.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn