

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BRITTANY N WILLIAMS
Claimant

APPEAL 18A-UI-08529-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 07/08/18
Claimant: Appellant (4)**

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

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 8, 2018, (reference 03) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on August 28, 2018. Claimant participated personally. Claimant's Exhibit A was admitted into evidence.

ISSUE:

The issue in this matter is whether claimant is able and available for work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was pregnant and was going into labor during the week ending July 28, 2018. Claimant gave birth on July 31, 2018 and she was released to go back to work beginning August 5, 2018.

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 effective August 5, 2018.

Claimant was not available for work for the two weeks ending August 4, 2018. Claimant has been released by her physician and she is able and available for work beginning on August 5, 2018.

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".

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. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Claimant was not available for work for the two weeks ending August 4, 2018. Claimant has been released by her physician and she is able and available for work beginning on August 5, 2018. Benefits are withheld for the two weeks ending August 4, 2018. Benefits shall be allowed effective August 5, 2018.

DECISION:

The decision of the representative dated August 8, 2018, (reference 03) is modified in favor of the appellant. Claimant is not eligible to receive unemployment insurance benefits for the two weeks ending August 4, 2018. Claimant is eligible for benefits beginning on August 5, 2018, provided claimant meets all other eligibility requirements.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn