

a non-work related hernia and was off work beginning on March 28, 2005 for treatment. She returned to work on May 12, 2005 and worked until May 28, 2005 when she was again taken off work by her physician due to a second non work-related hernia. The claimant was hospitalized and spent time recuperating with family and friends in Wyoming. The claimant was not released to return to work without restrictions by her physician until September 6, 2005. The claimant has not been offered any work by the employer since September 6, 2005. The employer plans on putting the claimant back on the schedule beginning in November 2005.

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work until September 6, 2005.

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.

871 IAC 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.

The claimant requested and was given a leave of absence to seek treatment for her hernia problems. She was physically not able to work from May 28 until her doctor released her to return to work without restriction on September 6, 2005. The claimant was not able to and available for work from May 28, until September 6, 2005. The claimant has now established her ability to work beginning September 6, 2005. Since September 6, 2005 the employer has not made work available for her. Benefits are allowed beginning September 6, 2005, provided the claimant is otherwise eligible.

DECISION:

The September 1, 2005, reference 01, decision is modified in favor of the appellant. The claimant is not able to work and available for work effective May 28, 2005 through September 5, 2005. The claimant is able to and available for work beginning September 6, 2005. Benefits are allowed beginning September 6, 2005, provided the claimant is otherwise eligible.

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