SAMANTHA CAMPBELL
Claimant

IOWA WORKFORCE
  DEVELOPMENT DEPARTMENT

APPEAL NO. 14A-UI-06876-GT

ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/08/14
Claimant: Appellant (4)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 3, 2014, reference 02, which held claimant was not able and available for work. After due notice, a hearing was scheduled for and held on July 21, 2014. Claimant participated personally. 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 gave birth to a child which required special attention in early February of 2014. Claimant was granted a FMLA leave by employer while claimant cared for her child. Claimant was not available or able to work during that time. On or about July 7, 2014 claimant's husband received permission from his employer to change his work shift to allow him to provide care for the couples' child in the event claimant found suitable work.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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.

Inasmuch as the care of claimant's child was not work related and the treating physician had not released the claimant to return to work, the claimant had not established the ability to work up until July 6, 2014. Benefits are withheld from June 8, 2014 through July 5, 2014. Claimant is available to return to work as she and her husband are able to take turns in caring for their special needs child. Benefits shall be allowed effective July 6, 2014 provided claimant meets all other eligibility requirements.

DECISION:

The decision of the representative dated July 3, 2014, reference 02, is modified in favor of the claimant. Claimant was not able and available for work for the dates beginning June 8, 2014 through July 5, 2014. Claimant is eligible to receive unemployment insurance benefits, effective July 6, 2014, provided claimant meets all other eligibility requirements.

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Duane L. Golden
Administrative Law Judge

_____
Decision Dated and Mailed

dlg/css