

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TABU V KAZEZE
Claimant

APPEAL NO. 15A-UI-10036-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/15/15
Claimant: Appellant (4)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Tabu Kazeze filed a timely appeal from the August 24, 2015, reference 03, decision that denied benefits for the four-week period of July 5, 2015 through August 1, 2015, based on an Agency conclusion that Ms. Kazeze was under the care of a doctor and had not been released to work. After due notice was issued, a hearing was held on September 24, 2015. Ms. Kazeze participated personally and was represented by attorney Jennifer Donovan. The hearing in this matter was consolidated with the hearing in appeal number 15A-UI-10037-JTT. Exhibits One, Two and Department Exhibits D-1 through D-5 were received into evidence.

ISSUE:

Whether Ms. Kazeze was able to work and available for work during the four-week period of July 5, 2015 through August 1, 2015,

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Tabu Kazeze established a claim for benefits that was effective March 15, 2015. Workforce Development determined Ms. Kazeze's weekly benefit amount to be \$432.00. Ms. Kazeze made weekly claims that included claims for the weeks ending July 11, 2015 and July 18, 2015 and received \$432.00 in benefits for both weeks.

On Saturday, July 18, 2015, Ms. Kazeze gave birth to a full-term baby. Ms. Kazeze's pregnancy had been without complications. On Monday, July 20, 2015, Ms. Kazeze was discharged from the hospital. Ms. Kazeze's baby required a brief stay in a neonatal intensive care unit and was discharged from the hospital into Ms. Kazeze's care on Wednesday, July 22, 2015.

Ms. Kazeze discontinued her claim after the week that ended July 18, 2015. Ms. Kazeze reopened her claim during the week that started August 2, 2015.

In connection with contact with a Workforce Development representative on August 14, 2015, Ms. Kazeze provided a written statement from her doctor, dated August 4, 2015, in which the

doctor states that Ms. Kazeze was seen on August 4, 2015 for a post-partum exam and was released as of that date to return to work without restrictions.

Ms. Kazeze has provided a written statement from her doctor, dated September 2, 2015, in which the doctor states that Ms. Kazeze was able to work during the period of July 5-17, 2015.

Ms. Kazeze is a registered nurse. Her license was in good standing during the period in question. Ms. Kazeze made two employer job contacts during the week that ended July 11, 2015 and three employer contacts during the week that ended July 18, 2015. Ms. Kazeze did not perform a job search during the weeks that ended July 25 and August 1, 2015.

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 and (2) provide:

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.

(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 evidence in the record establishes that Ms. Kazeze was medically able to work and available for work during the two-week period of July 5, 2015 through July 18, 2015. Ms. Kazeze was eligible for benefits for those two weeks, provided she met all other eligibility requirements.

The evidence establishes that Ms. Kazeze was not available for work during the two-week period of July 19, 2015 through August 1, 2015. Ms. Kazeze was caring for her new baby, was recovering from giving birth, and had suspended her job search for those two weeks. In addition, Ms. Kazeze made no claim for benefits for those two weeks. Ms. Kazeze is not eligible for benefits for those two weeks.

DECISION:

The August 24, 2015, reference 03, is modified as follows. The claimant was able and available during the two-week period of July 5, 2015 through July 18, 2015, and is eligible for benefits for those two weeks, provided she met all other eligibility requirements. The claimant was not available for work during the two-week period of July 19, 2015 through August 1, 2015 and is not eligible for benefits for those two weeks.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css