

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**DASHALA M SANDERS**  
Claimant

**DAVENPORT COMMUNITY SCHOOL DIST**  
Employer

**APPEAL NO. 22A-UI-04390-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/09/22**  
**Claimant: Appellant (5)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

On February 10, 2022, Dashala Sanders (claimant) filed a timely appeal from the February 7, 2022 (reference 02) decision that denied benefits effective January 9, 2022, based on the deputy's conclusion that the claimant was unable to work due to pregnancy. After due notice was issued, a hearing was held on March 22, 2022. Claimant participated. Wendy Berg represented the employer. Exhibits A and B were received into evidence. The administrative law judge took official notice of the following Agency administrative records: KCCO, DBRO, WAGE-A and the February 2, 2022 fact-finding materials.

**ISSUE:**

Whether the claimant has been able to work and available for work since January 9, 2022.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant, Dashala Sanders, established an original claim for benefits that was effective January 9, 2022. Iowa Workforce Development set the weekly benefit amount at \$334.00. The base period consists of the fourth quarter of 2020 and the first, second and third quarters of 2021. The claimant has thus far made weekly claims for each of the 10 weeks between January 9, 2022 and March 19, 2022. Iowa Workforce Development has not disbursed benefits in connection with the claim.

The claimant is employed by Davenport Community School District as a full-time paraprofessional assigned to the Student Behavior Support Room at Madison Elementary School. The District is not a base period employer for purposes of the January 9, 2022 original claim. The claimant began the employment in September or October 2021 and last performed work for the employer on January 12, 2022. The claimant's work hours are 8:00 a.m. to 3:30 p.m., Monday through Friday. Principal Cassie Stewart is the claimant's supervisor. The claimant's duties involve assisting students with behavioral issues when they need to be removed from the classroom due to disruptive and/or aggressive behavior. The children at issue may be verbally and/or physically aggressive.

At the time the claimant went off work in January 2022, the claimant was seven months pregnant. The claimant's expected delivery date was March 15, 2022. After the claimant completed her shift on January 12, 2022, the claimant went to a hospital emergency room in response to starting preterm labor a second time. The emergency room physician took the claimant off work until the claimant could meet with her regular ob-gyn. The claimant's obstetrician advised the claimant to go on bed rest or light-duty until the baby was born. The ob-gyn advised the claimant to perform only limited housework. The claimant gave the employer a medical note from the emergency room physician and from her ob-gyn. The claimant inquired about applying for other, better-paying positions, but did not request an accommodation that would allow her to continue working during her pregnancy. The claimant commenced an approved absence from the employment that was expected to last through most of the remaining school year, if not to the end of the academic year. At the time the claimant went off work, she planned to remain with her new baby at least for the first six weeks after giving birth. The claimant completed a leave of absence request form. The claimant and the employer are still working out the details of when the claimant will return to the employment. The employer has continued to have the claimant's regular work available for the claimant.

The claimant gave birth on March 10, 2022. Since that time, the claimant has been at home caring for her new baby, her one-year-old, and her five-year-old. When the claimant was still working, the one-year-old and the five-year-old would attend daycare. The five-year-old has not yet started school. The claimant also has an eight-year-old child. The claimant plans

The claimant's wages for the week that ended January 15, 2022 totaled \$261.00.

On February 2, 2022, the claimant participated in a fact-finding interview that addressed her ability to work and availability for work. The claimant stated that she was still employed with Davenport Community School District that she was on an excused leave of absence until she had her baby, and that her doctor had placed her on bed rest for her pregnancy. The claimant stated she had twice gone into pre-term labor, with the first instance occurring on January 12, 2022. The claimant stated she went to the hospital on that date, was placed on bed rest at that time, and provided the employer with a medical note indicating the same. The claimant stated she called in an absence on January 13, 2022. The claimant stated that she was not working at all and could not work until she had her baby. The claimant stated that she was not "qualified" to do any work at the moment and was restricted to light-duty, which meant very limited housework. The claimant stated her baby was due on March 15, 2022.

On February 7, 2022, Iowa Workforce Development mailed the reference 02 decision to the claimant. The reference 02 decision denied benefits effective January 9, 2022, based on the deputy's conclusion that the claimant was unable to work due to pregnancy.

After the claimant received the decision denying benefits, the claimant requested and received a new medical note from her doctor. The new medical note is undated. The new medical note states as follows:

This letter is to certify the above referenced patient is under my professional care for pregnancy. It is to inform you that my patient is suffering and at risk of preterm labor. I advised her to take proper safe preventions and be placed on light duty for the remainder of her pregnancy. The following restrictions apply: No standing for more than 25% of shift, No lifting/carrying, No one on one care with aggressive children. No restraints.

## REASONING AND CONCLUSIONS OF LAW:

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) and (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.

(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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

(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.

Iowa Admin. Code r. 871-24.23(1) and (10) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

...

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant has not met the able and available requirements since establishing the January 9, 2022 original claim. From January 13, 2022 to March 1, 2022, the claimant was unable to work due to illness. The evidence indicates the claimant was advised to engage in bed rest and to restrict her activities until the birth of her child. From January 13, 2022 to the present, the claimant been on a pregnancy/maternity leave of absence that she requested and the employer approved. Benefits are denied effective January 9, 2022. The able and available disqualification continued at the time of the appeal hearing. The able and available disqualification will continue until the claimant becomes available to return to the full-time employment. The claimant must meet all other eligibility requirements.

**DECISION:**

The February 7, 2022 (reference 02) decision is MODIFIED as follows. The claimant has not met the able and available requirements since establishing the January 9, 2022 original claim. Benefits are denied effective January 9, 2022. The able and available disqualification continued at the time of the appeal hearing. The able and available disqualification will continue until the claimant becomes available to return to the full-time employment. The claimant must meet all other eligibility requirements.



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James E. Timberland  
Administrative Law Judge

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March 31, 2022  
Decision Dated and Mailed

jet/kmj