

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**VICKY M BRICKER-PURVIS**  
Claimant

**APPEAL NO. 07A-UI-08556-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEY'S MARKETING COMPANY**  
Employer

**OC: 07/29/07 R: 03**  
**Claimant: Appellant (2)**

Section 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

Vicky Bricker-Purvis filed an appeal from a representative's decision dated August 31, 2007, reference 02, which denied benefits for the two weeks ending August 11, 2007 on a finding that she was not able to work. After due notice was issued, a hearing was held by telephone on September 24, 2007. Ms. Bricker-Purvis participated personally. The employer did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether Ms. Bricker-Purvis has satisfied the availability requirements of the law since filing her claim effective July 29, 2007.

**FINDINGS OF FACT:**

Having heard the testimony of the witness and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Bricker-Purvis began working for Casey's Marketing Company on May 13, 2001 and last performed services on June 12, 2007. She was employed full time as a kitchen worker and store clerk. She sustained a work-related injury to her left foot in November of 2005. Due to continuing problems with the foot, she had to undergo surgery in June of 2007. Ms. Bricker-Purvis left the employment on a medical leave of absence on June 12, 2007.

The employer wanted Ms. Bricker-Purvis to return to work by July 23, as that is the point at which she exhausted all available leave. However, she had not been released by her doctor to resume work activity. She saw her doctor on July 24 and was released to return to work on July 30. Ms. Bricker-Purvis was to work four hours a day for five days the first week back. She was to increase work activity to six hours for five days the second week and eight hours for five days the third week. Ms. Bricker-Purvis gave the doctor's release to the employer on July 27. She was told the employer did not have any hours for her at that time and that she would be contacted when hours were available. As of the date of the hearing, Ms. Bricker-Purvis had not been recalled to work at Casey's.

**REASONING AND CONCLUSIONS OF LAW:**

The issue before the administrative law judge is whether Ms. Bricker-Purvis was able to work as of July 29, 2007. During the period from July 29 through August 11, 2007, she was not able to work eight hours each day as she had prior to leaving for surgery in June. However, she made herself available to work five and six hours each day as advised by her doctor. Ms. Bricker-Purvis' inability to work a full eight-hour day was temporary and resulted from an injury sustained while working for Casey's. The administrative law judge does not find her restrictions to be so substantial as to warrant a finding that she was unavailable for work within the meaning of Iowa Code section 96.4(3). Accordingly, benefits are allowed as of July 29, 2007.

**DECISION:**

The representative's decision dated August 31, 2007, reference 02, is hereby reversed. Ms. Bricker-Purvis satisfied the availability requirements of the law effective July 29, 2007. Benefits are allowed, provided she satisfies all other conditions of eligibility.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw