

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLA M SILVA
Claimant

APPEAL NO. 11A-UI-09959-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

UNITED EQUIPMENT ACC INC
Employer

OC: 06/12/11
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Carla Silva, filed an appeal from a decision dated July 25, 2011, reference 02. The decision disqualified her from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on August 22, 2011. The claimant participated on her own behalf and was represented by Luke Guthrie. The employer, United Equipment, participated by Human Resources Manager Mary Dunn.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Carla Silva was employed by United Equipment starting May 10, 2004 as a full-time assembler. Her last day of work was March 9, 2011, and after that date her physician provided a statement that she was completely unable to work. Ms. Silva maintains her medical problems are work related but the employer refutes that. The matter has not yet been determined.

A second doctor's note was provided on June 15, 2011, releasing her with restrictions of not working more than three days per week, not lifting, pulling or pushing more than ten pounds and not extending her arms for "long periods of time." She could not perform all of her regular job duties as required without violating these restrictions.

She had surgery on August 2, 2011, and has been under doctor's orders not to work at all since that time.

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".

The claimant is under restrictions which would make it impossible for her to perform all of her regular job duties as required. A "recovery" means a complete recovery without restriction. *Hedges v. IDJS*, 368 N.W.2d (Iowa App. 1985). The claimant cannot be considered able and available for work with her current restrictions. As a result she is not able and available for work and is ineligible for unemployment benefits.

DECISION:

The representative's decision of July 25, 2011, reference 02, is affirmed. Carla Silva is ineligible for unemployment benefits.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css