

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TAJUANA M ROBINSON**  
Claimant

**APPEAL 16A-UI-04936-DGT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**"O'REILLY AUTOMOTIVE INC**  
Employer

**OC: 03/20/16  
Claimant: Respondent (2R)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) – Availability Disqualifications

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated April 22, 2016, (reference 02) that held claimant able to and available for work. After due notice, a hearing was scheduled for and held on May 12, 2016. Claimant participated personally. Employer participated by Jacqueline McKinney, Leave of Absence Coordinator. Employer's Exhibits 1 through 6 were 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 was having complications related to her pregnancy in February, 2016. She was placed on a voluntary leave of absence, and was later released by her doctor to go back to work with medical restrictions on March 16, 2016.

Employer was not sure if it was able to accommodate her lifting restrictions because her job as a delivery driver required her to lift more than 25 pounds. Employer researched the issue, and discussed claimant's situation with management. It later decided that it would be able to accommodate her restrictions beginning on April 15, 2015. Claimant is currently working for employer at the parts counter and is still under a lifting restriction as of the date of the hearing.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective March 20, 2016.

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 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 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.

Iowa Admin. Code r. 871-24.23(35), (10) and (23) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

(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.

(23) The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of

determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Subsection d of Iowa Code § 96.5(1) provides an exception where:

The individual left employment because of illness, injury or pregnancy upon the advice of a licensed and practicing physician, and upon knowledge of the necessity for absence immediately notified the employer, or the employer consented to the absence, and after recovering from the illness, injury or pregnancy, when recovery was certified by a licensed and practicing physician, the individual returned to the employer and offered to perform services and ... the individual's regular work or comparable suitable work was not available, if so found by the department, provided the individual is otherwise eligible.

The statute specifically requires that the employee has recovered from the illness or injury, and this recovery has been certified by a physician. The exception in section 96.5(1)(d) only applies when an employee is *fully* recovered and the employer has not held open the employee's position. *White*, 487 N.W.2d at 346; *Hedges v. Iowa Dep't of Job Serv.*, 368 N.W.2d 862, 867 (Iowa Ct. App. 1985); see also *Geiken v. Lutheran Home for the Aged Ass'n.*, 468 N.W.2d 223, 226 (Iowa 1991) (noting the full recovery standard of section 96.5(1)(d)).

The Supreme Court ruled that a claimant with a non-work related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

Inasmuch as the medical condition was not work-related and the treating physician had not released the claimant to return to work without restrictions, she had not established her ability to work while still an employee of employer effective March 20, 2016 through the week ending April 16, 2016. While she may have been able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since she had not been released to perform her full work duties, she is not considered able to or available for work during that period.

Claimant began working for employer and her leave of absence ended on or about April 15, 2016. She became unavailable to work at that time because she was gainfully employed. She is not eligible for benefits while she is employed full-time for employer. Benefits are withheld beginning on March 20, 2016.

#### **DECISION:**

The April 22, 2016, (reference 02) unemployment insurance decision is reversed. The claimant is not able to work and available for work effective March 20, 2016. The employer is not legally obligated to accommodate an illness or injury that is not work-related, and claimant was under a

medical restriction during those dates. Claimant later began working for employer on a full-time basis on April 15, 2016 and is not eligible for benefits after that date because working had removed her from the labor market. Benefits are withheld unless her employment is involuntarily terminated and she is otherwise eligible for benefits.

**REMAND:**

The claimant may have received benefits she was not entitled to receive. The overpayment of benefits issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/pjs