

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SADE SAMUEL
Claimant

APPEAL NO. 16A-UI-08983-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 06/12/16
Claimant: Appellant (1/R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Sade Samuel filed a timely appeal from the August 9, 2016, reference 06, decision that denied benefits effective July 17, 2016, based on an agency conclusion that she was not able to work due to illness. After due notice was issued, a hearing was held on September 2, 2016. Ms. Samuel participated and presented additional testimony through Jilisa Smith. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO AND KCCO.

ISSUES:

Whether Ms. Samuel has been able to work and available for work since July 17, 2016.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Sade Samuel most recently worked as a part-time cashier at Dunkin Donuts. Ms. Samuel worked 20 to 25 hours per week in the Dunkin Donuts employment. Ms. Samuel last performed work for that employer on June 14, 2016. Ms. Samuel left the Dunkin Donuts employment because she felt she should cease working in light of the impending birth of her second child. Sade Samuel established an original claim for unemployment insurance benefits that was effective June 12, 2016. Since that time, Ms. Samuel has consistently made weekly claims.

On July 18, 2016, Ms. Samuel gave birth to her second child. Though Ms. Samuel resides in Dubuque, she gave birth in a Chicago hospital. Ms. Samuel was discharged from the hospital on July 19, 2016. The baby was discharged from the hospital on July 20, 2016. Ms. Samuel and the medical provider did not discuss Ms. Samuel's ability to work.

When Ms. Samuel made her weekly claim for the week that ended June 18, 2016, she reported that she had voluntarily quit her employment. When Ms. Samuel made her weekly claim for the week that ended June 25, 2016, she reported that she had been laid off. When Ms. Samuel made her claim for those two weeks, she reported zero employer contacts. When Ms. Samuel made her weekly claim for the week that ended July 2, 2016, she reported zero employer

contacts. When she made her weekly claim for the week that ended July 9, 2016, she reported one employer contact. When Ms. Samuel made her weekly claim for the week that ended July 16, 2016, the week before she gave birth, she reported two employer contacts.

Ms. Samuel has not kept a log of her job contacts.

When Ms. Samuel made her weekly claim for the week that ended July 23, 2016, she reported three employer contacts. However, this was the week that Ms. Samuel gave birth on Monday, July 18, and the week that her newborn was discharged from the hospital on Wednesday, July 20. At the appeal hearing, Ms. Samuel could only recall one job contact for that week.

When Ms. Samuel made her weekly claims for the weeks that ended July 30 and August 6, 2016, she reported three employer job contacts for each week. However, Ms. Samuel could not recall any of those purported job contacts at the time of the appeal hearing.

On August 8, 2016, Ms. Samuel spoke with a Workforce Advisor. Ms. Samuel told the Workforce Advisor that she had given birth on July 18, 2016, that she had been released from the hospital on July 20, 2016, and that she was still under a doctor's care.

When Ms. Samuel made her weekly claim for the week that ended August 13, 2016, Ms. Samuel reported making four employer job contacts. However, Ms. Samuel could not recall any of those purported job contacts at the time of the appeal hearing.

When Ms. Samuel made her weekly claim for the week that ended August 20, 2016, she reported making three job contacts. Those job contacts were Buffalo Wild Wings, Seven Eleven, and an inventory company.

When Ms. Samuel made her weekly claim for the week that ended August 27, 2016, she reported that she had made three employer contacts. Ms. Samuel testified at the hearing that she had made four employer contacts that week. Those contacts were Family Dollar, McDonald's, KFC and a hotel in Davenport.

Ms. Samuel went to an emergency room on August 28, 2016 for evaluation of post-partum bleeding. That medical provider directed Ms. Samuel to follow up with her doctor. Ms. Samuel scheduled a follow up appointment with her doctor for September 8, 2016 in Moline.

At the time of the September 2, 2016, appeal hearing, Ms. Samuel's newborn was less than six weeks old. Ms. Samuel had used a home daycare operated by her cousin to provide care for her firstborn child while Ms. Samuel worked at Dunkin Donuts. Ms. Samuel anticipates that her cousin would also care for her newborn when Ms. Samuel returns to work.

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 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. 871-24.22(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.

(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 August 9, 2016, reference 06, decision denied benefits effective July 17, 2016, based on a Workforce Advisor's conclusion that Ms. Samuel was not able to work at that time due to illness. That decision was based on a statement Ms. Samuel provided to the Workforce Advisor on August 8, 2016, in which she advised that she was still under a doctor's care. Ms. Samuel has provided insufficient evidence to prove by a preponderance of the evidence that she has been able to work since the week that started July 17, 2016. She has provided no medical documentation to substantiate her assertion that she has been physically able to work or that a doctor has considered the needs of Ms. Samuel's newborn in determining that Ms. Samuel should be released to return to work. Ms. Samuel's August 8 statement to the Workforce Advisor, her testimony concerning her August 28, 2016 trip to the emergency room for evaluation of post-partum bleeding, and her planned September 8, 2016 follow up medical

appointment support the conclusion that Ms. Samuel has not been able to work within the meaning of the law since the week that started July 17, 2016. The evidence that indicated Ms. Samuel was not able to work also supports the conclusion that Ms. Samuel has not met the available for work requirement. Ms. Samuel's incomplete testimony regarding her work search activities for the period of July 17 through August 13, 2016, and the conflict between that testimony and Ms. Samuel's weekly claims for that period, indicates two things. First, the evidence indicates that Ms. Samuel was not engaged in an active and earnest search for work during that period. Second, it indicates that Ms. Samuel likely fabricated the work search information she reported for that period. Ms. Samuel was able to provide sufficient testimony regarding her work search for the weeks ending August 20 and 27 to establish that she did indeed look for work during those two weeks. Despite that evidence of a work search for those two weeks, the other evidence indicates that Ms. Samuel did not meet the able and available requirement for those two weeks. At the time of the Friday, September 2, 2016 appeal hearing, Ms. Samuel had still not had her follow up visit with her doctoring following the August 28, 2016 emergency room visit. Accordingly, the administrative law judge concludes that Ms. Samuel has not demonstrated by a preponderance of the evidence that she was able and available for work during the week that ended September 3, 2016.

In summary, Ms. Samuel has not shown that she was able to work and available for work within the meaning of the law during the period of July 17, 2016 through September 3, 2016 and is not eligible for benefits for that period. To demonstrate compliance with the able and available eligibility requirements going forward, Ms. Samuel must provide Workforce Development with medical documentation indicating that she has been released to return to work without restrictions. Ms. Samuel must also demonstrate an active and earnest search work and keep a log of her job contacts.

This matter will be remanded to the Benefits Bureau for determination of whether Ms. Samuel has met the able and available requirements for the period beginning September 4, 2016.

This matter will also be remanded for adjudication of Ms. Samuel's separation from her most recent employer.

DECISION:

The August 9, 2016, reference 06, decision is affirmed. The claimant has not demonstrated compliance with the able and available eligibility requirements for the period of July 17, 2016 through September 3, 2016. The claimant is not eligible for benefits for that period.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has met the able and available requirements for the period beginning September 4, 2016.

This matter is remanded for adjudication of Ms. Samuel's separation from her most recent employer.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs