

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

KELLY M LAUE
APT A4
405 S WASHINGTON AVE
GRAETTINGER IA 51342-1069

CHRISTENSEN FAMILY FARMS INC
PO BOX 3000
SLEEPY EYE MN 56085-3000

Appeal Number: 06A-UI-01987-DWT
OC: 01/08/06 R: 01
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Kelly M. Laue (claimant) appealed a representative's February 8, 2006 decision (reference 02) that concluded she was not eligible to receive benefits as of January 8, 2006, because she was unable to perform her work for Christensen Family Farms, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 8, 2006. The claimant participated in the hearing with her witness, Robert Kinnetz. Shawn Johnson, the human resources representative, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

As of January 8, 2006, is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on September 28, 2004. The claimant worked as a full-time herd's person. The claimant works with swine all day.

In early January 2006, the claimant's doctor gave her a work restriction indicating she could not work a position where she could be hit by swine because the claimant is pregnant. The January restriction repeated that the claimant could not lift more than 25 pounds. Since the claimant worked with swine all day, the employer could not accommodate the claimant's work restriction and did not have any work for the claimant to do. The employer informed the claimant she could submit paperwork for a leave under the Family Medical Leave Act to protect her job or she could possibly be terminated while she was unable to perform her job.

The claimant did not believe she had a choice and submitted the required paperwork. As of January 11, 2006, the claimant is on a medical leave of absence. This leave continues until she is released to return to work without restrictions. The claimant's baby is due in early to mid-April.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, she must be able to and available for work. Iowa Code § 96.4-3. A leave of absence negotiated with the consent of both parties, employer and employee, is deemed a period of voluntary unemployment for the employee, and the employee is considered ineligible to receive benefits during the leave of absence. 871 IAC 24.23(2)(j).

Although the claimant's physician did not restrict the claimant from working, the claimant was restricted from working with swine that might kick her. The employer is not obligated to accommodate or make special work assignments for the claimant so she could continue working. To preserve her job and maintain her health benefits, the claimant submitted the required paperwork to obtain a medical leave of absence until her child was born. The employer granted the claimant's "request" for a medical leave of absence. Since the claimant is currently on a medical leave of absence, she is voluntarily unemployed and is not eligible to receive benefits as of January 8, 2006.

DECISION:

The representative's February 8, 2006 decision (reference 02) is affirmed. The claimant is not voluntarily employed because she is on a medical leave of absence. As of January 8, 2006, the claimant is not eligible to receive unemployment insurance benefits. When the claimant is no longer on a medical leave of absence, she can file an additional claim and provide a doctor's statement indicating what restrictions if any she has at that time to establish her availability to work.

dlw/kkf