

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLA M STRONG
Claimant

SEDONA STAFFING INC.
Employer

APPEAL 23A-UI-09923-DZ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/10/23
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able to and Available for Work

STATEMENT OF THE CASE:

Sedona Staffing Inc., the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) October 12, 2023 (reference 05) unemployment insurance (UI) decision. IWD found Ms. Strong eligible for REGULAR (state) UI benefits as of September 10, 2023 because IWD concluded Ms. Strong is available for work and medically able to work. On October 23, 2023, the Iowa Department of Inspections, Appeals and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Ms. Strong for a telephone hearing scheduled for November 2, 2023.

The undersigned administrative law judge held a telephone hearing on November 2, 2023. The undersigned heard Appeals 23A-UI-09922-DZ-T and 23A-UI-09923-DZ-T together and created one hearing record. The employer participated in the hearing through Trisha Kaiser, senior account manager and Colleen McGinty, unemployment insurance benefits administrator. Ms. Strong participated in the hearing personally. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence. The undersigned did not admit Employer's Exhibit because it is a duplicate of Employer's Exhibit 1.

ISSUES:

Is Ms. Strong able to and available for work as of September 10, 2023?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Ms. Strong began working for the employer, a temporary staffing agency, in March 2023. She worked as a full-time fork truck driver assigned to work at Standard Distribution. Her employment ended with the employer on August 23, 2023.

On Wednesday, August 2, 2023, Ms. Strong called in to Standard Distribution due to pregnancy complications. Ms. Strong saw her doctor the next day and her doctor put her on light duty work. Ms. Strong contacted Standard Distribution that day and told them that she was having pregnancy complications, so her doctor put her on light duty.

¹ Appellant is the person or employer who appealed.

The following Monday, August 7, Ms. Strong contacted the employer and told Ms. Kaiser that her doctor put her on light duty due to pregnancy complications. Ms. Strong asked for light duty work. Ms. Kaiser told Ms. Strong that the employer did not have light duty work available and the employer would only give her light duty work if she was injured on the job. Ms. Strong stated that she would contact her doctor to see if the doctor would release her from light duty work and let the employer know. Ms. Strong's doctor did not release her from light duty work.

On August 23, Ms. Strong contacted the employer about a paystub. Ms. Strong's doctor still had her on light duty work restriction at this time. During that conversation, Ms. Strong stated that her doctor may put her on bed rest due to pregnancy complications. Ms. Strong's doctor never put her on bed rest. The employer still did not have light duty work available for Ms. Strong. The employer concluded that Ms. Strong quit as of August 23 because the employer concluded that Ms. Strong was on bed rest. Appeal 23A-UI-09922-DZ-T addresses Ms. Strong's eligibility for UI benefits based on how her job ended with this employer. As of the hearing date, Ms. Strong remains on light duty work restriction from her doctor.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes Ms. Strong is able to and available for work as of September 10, 2023, the effective date of her UI claim.

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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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:

Benefit 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) provide:

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 medical practitioner and has not been released as being able to work.

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."² "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."³ A person claiming benefits has the burden of proof that she is able to work, available for work, and earnestly and actively seeking work.⁴

In this case, Ms. Strong's doctor continues to advise that she do light duty work only. Ms. Strong is not able to do the job she did at Standard Distribution but she is able to do some work, as long as it is light duty work. Ms. Strong is able to and available for work and she is eligible for UI benefits.

DECISION:

The October 12, 2023 (reference 05) UI decision is AFFIRMED. Ms. Strong is able to and available for work as of September 10, 2023, the effective date of her UI claim. Ms. Strong is eligible for UI benefits, as long as no other decision denies her UI benefits.



Daniel Zeno
Administrative Law Judge

November 3, 2023
Decision Dated and Mailed

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² *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).

³ *Sierra* at 723.

⁴ Iowa Admin. Code r. 871-24.22.

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

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.

AN APPEAL TO THE BOARD SHALL 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.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or 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.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.