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

LINDSAY M SMITH
Claimant

APPEAL NO. 10A-UI-08590-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERISERVE INTERNATIONAL INC
Employer

OC: 05-16-10
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the June 10, 2010, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 3, 2010. The claimant did participate. The employer did participate through Allen Blakestad, Director. Claimant's Exhibit A was entered and received into the record.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is still an employee of the employer and is on FMLA while she has a 20-pound lifting restriction due to her pregnancy. The claimant is required to be able to lift up to 50 pounds in order to help transfer residents in and out of wheelchairs. The employer does not accommodate lifting restrictions due to pregnancy.

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 May 4, 2010.

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".

871 IAC 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.

871 IAC 24.23(35) 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.

Employer is not obligated to accommodate a non-work related medical condition; thus, until claimant is released to perform her full work duties, she is not considered able to or available for work. Benefits are denied.

DECISION:

The representative's decision dated June 10, 2010 (reference 01) is affirmed. The claimant is not able to work and available for work effective May 4, 2010. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

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Teresa K. Hillary
Administrative Law Judge

_____
Decision Dated and Mailed

tkh/kjw