

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEBORAH A OLSEN**  
Claimant

**APPEAL NO. 06A-UI-10458-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVENPORT FARM & FLEET INC**  
Employer

**OC: 09-03-06 R: 03  
Claimant: Respondent (1)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the October 12, 2006, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held on December 4, 2006. The claimant did participate through the interpretation of Kim Kischer-Larson and was represented by Terra Wood, Attorney at Law. The employer did participate through Marilyn Lovejoy, Human Resources Generalist, and Rod Burkhead, Store Manager. Claimant's Exhibit A was received. Employer's Exhibit One was received.

**ISSUE:**

Is the claimant able to and available for work or did she request a leave of absence?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as an inventory control clerk full time beginning July 26, 1999. The claimant remains an employee of the employer through date of hearing.

The claimant last worked on March 3, 2006. On that date she presented a doctor's note with work restrictions to the employer that limited her ability to lift. The claimant has sought treatment from the employer's physicians and from her own treating physicians. The claimant believes that her injury is due to a work-related event or occurrence and she is currently pursuing a claim for workers' compensation benefits. The employer currently denies that the claimant's work restrictions are as a result of any work-related injury and thus, they are not willing to accommodate the work restrictions. The employer's policy is that they only accommodate work restrictions that arise from work-related injuries.

The claimant believes and it appears her treating physician, shares her opinion that her hip/leg problems are the result of the repeated heavy lifting she was required to perform at work. The claimant can think of no non-work-related incident that occurred that caused her hip/leg pain.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work

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 24.23(1), (35) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

The administrative law judge concludes based on the credible testimony of the claimant in conjunction with the opinion of her doctor, that her hip/leg pain is a result of work she performed. The claimant's work restrictions then arise from a work-related injury. Inasmuch as the injury was work related and the treating physician has released the claimant to return to work, even with restrictions the claimant has established her ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

**DECISION:**

The representative's decision dated October 12, 2006, reference 01, is affirmed. The claimant is able to work and available for work effective March 3, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs