

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBIE BARCLAY
Claimant

APPEAL NO. 10A-UI-15430-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OPTIMAE LIFESERVICES INC
Employer

OC: 10/03/10
Claimant: Appellant (1)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Bobbie Barclay (claimant) appealed an unemployment insurance decision dated November 1, 2010, reference 02, which held that she was not eligible for unemployment insurance benefits because she was not able to work for Optimae Lifeservices, Inc. (employer) because of pregnancy. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 28, 2010. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a part-time consumer support specialist in February 2010. She worked through September 10, 2010, when she gave birth to her baby. The claimant was released to light duty on September 17, 2010 and was released without restrictions on October 25, 2010. The claimant returned to her part-time employment on November 13, 2010.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able 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) 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.

871 IAC 24.23(26) provides:

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

(26) Where a claimant is still employed in a part-time job at the same hours and wages as contemplated in the original contract for hire and is not working on a reduced workweek basis different from the contract for hire, such claimant cannot be considered partially unemployed.

The claimant was hired as a part-time consumer support specialist and continues to work in that same capacity. She was medically unable to work from September 10, 2010 through October 25, 2010, due to giving birth to her child. The claimant does not meet the availability requirements of the law. In addition to not being medically able to work for six weeks, the claimant does not meet the availability requirements of the law overall, because she is still employed at the same hours and wages as contemplated in her original contract of hire and is not working on a reduced workweek. Consequently, the claimant is disqualified from receiving benefits.

DECISION:

The unemployment insurance decision dated November 1, 2010, reference 02, is affirmed. The claimant does not meet the availability requirements of the law and benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw