

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY M RITZE**  
Claimant

**APPEAL NO. 13A-UI-14056-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE WALDINGER CORPORATION**  
Employer

**OC: 11/17/13  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the December 10, 2013, (reference 02) unemployment insurance decision that denied benefits based claimant's ability to and/or availability for work. The parties were properly notified about the hearing. A telephone hearing was held on January 15, 2014. Claimant participated. Employer participated through human resource accountant Charity Markman.

**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: Claimant was employed full-time as a dispatcher and was separated from employment on November 21, 2013. Her last day of work was October 29, 2013. She gave her November 19 medical excuse to Becky Buch in human resources on November 21. Prior to that when she had been ill from pregnancy complications branch manager Jeremy Ries told her she did not need to present a medical excuse. Jason Booth M.D. wrote on November 19, that claimant should be excused from work and "may return to work once the work situation is addressed and resolved." The situation the doctor was referring to was bullying by coworker Mary Banker since claimant started the employment. After Banker confronted and yelled at claimant about an error Banker made in January 2013, Ries set up weekly meetings but they did not continue. Banker got upset and cried at her desk and said it was not fair she had to work so many hours because claimant was new. Banker went into another room and screamed to "release stress." Claimant started having panic attacks. Banker helped others but gave claimant the silent treatment. Most recently in October 2013, Banker commented to coworker Steve Walrath about claimant calling her a "part-timer" because of her pregnancy-related absences and said the only reason she was still working there was because her father got her the job; Banker took control of her job when she was sick and only left her to answer the phone. Banker would not help her or answer questions. Claimant reported concerns in a feedback form to human resource recruiter Kim Steele and to Ries. Continued work was available in spite of alleged performance issues.

Claimant is due to give birth on March 20, 2014, and is released for other work.

**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 the week ending November 17, 2013.

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 96.19, 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.

Since the employment ended on November 21, 2013, claimant is no longer obligated to return to employer upon her medical release to offer her services. As of November 19, 2013, she was able to work, but was not allowed to return to her job given the unresolved problems with a coworker that were affecting her pregnancy and mental health. At that point, her ability to work is not measured by the job she held most recently, but by standards of her education, training, and work history. She is considered able to work even if she could not return to the job as most

recently performed for employer. Thus claimant is considered as able to work as of November 17, 2013. She is on notice that she must conduct at least two work searches per week and file weekly claims in order to retain eligibility for benefits.

**DECISION:**

The representative's decision dated December 10, 2013, (reference 02) is reversed. The claimant is able to work and available for work effective November 17 through 23, 2013. Benefits are allowed, provided she is otherwise eligible.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/pjs