

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SOLVEY CASTRO
Claimant

APPEAL NO: 15A-UI-08630-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARR-NUNN TRANSPORTATION INC
Employer

OC: 07/05/15
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 22, 2015, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 25 and continued on September 10, 2015. witness/co-driver Oscar Milian and was represented by Attorney Tom Duff. Wendy Nerring, Safety/Human Resources Manager, participated in the hearing on behalf of the employer and was represented by Attorney Sasha Monthei. Claimant's Exhibits A through D were admitted into evidence.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a full-time over-the-road truck driver for Barr-Nunn Transportation until June 30, 2015. She presented the employer with a doctor's note in March 2015 stating she needed to take a break from the truck and walk around every three hours due to her pregnancy. On June 24, 2015, the claimant received another doctor's note stating she needed to be on bed rest until her due date of September 21, 2015, "due to not being able to have breaks during work" (Claimant's Exhibit B). On July 27, 2015, after her separation from Barr-Nunn Transportation, the claimant's physician wrote her another note, based on her June 25, 2015, office visit, stating she could no longer drive a truck "due to not being able to have breaks in between working hours. She is able to work in an environment where she can take at least two breaks or more" (Claimant's Exhibit C).

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".

Iowa Admin. Code r. 871-24.22(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.

While the claimant can no longer work as an over-the-road truck driver, there are several other types of work she would be able to do. Accordingly, benefits are allowed, provided the claimant is otherwise found eligible.

DECISION:

The July 22, 2015, reference 03, decision is reversed. The claimant is able to work and available for work effective July 5, 2015. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs