

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHELLE L FITZGERALD**  
Claimant

**APPEAL NO: 170-UI-05885-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 06/05/16**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Team Staffing Solutions (employer) appealed a representative's February 8, 2017 decision (reference 03) that concluded Michelle Fitzgerald (claimant) was discharged and there was no evidence of willful or deliberate misconduct. This administrative law judge issued a decision on May 10, 2017, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on June 7, 2017, regarding the matter of whether the claimant was able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for June 22, 2017. The claimant participated personally. The employer participated by Sarah Fiedler, Human Resources Generalist.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: A representative's February 8, 2017 decision (reference 05) concluded the claimant was not able to work and benefits were denied as of January 15, 2017. The claimant did not appeal this decision. A representative's May 17, 2017 decision (reference 07) concluded the claimant was able to work and benefits were allowed as of February 26, 2017. The employer received the decision but did not appeal it. The claimant's physician released her to return to work with a lifetime ten-pound weight restriction.

On June 7, 2017, the Employment Appeal Board affirmed with modifications the separation decision and remanded the issue of whether the claimant was able and available for work with the employer. The decision indicated the claimant last worked for the employer on December 5, 2016. The employer has no work for the claimant unless she is released to return to work without any restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is able and available for work.

Iowa Code § 96.6(2) provides:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

This administrative law judge has no jurisdiction to hear the issue of whether the claimant is able and available for work. The issue was adjudicated in the May 17, 2017 representative's decision, (reference 07). This decision was not appealed by the employer. The lack of appeal cannot be circumvented by a remand from the Employment Appeal Board. Unless circumstances change and another fact finding decision is issued, the claimant is able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

**DECISION:**

The representative's February 8, 2017, decision (reference 03) is affirmed. Benefits are allowed, provided claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs