

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TAMMY J VORWALD
Claimant

APPEAL NO. 10A-UI-03214-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BENNETT MACHINE & FABRICATING INC
Employer

OC: 01/24/10
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated February 23, 2010, reference 01, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on April 28, 2010. Claimant participated personally and was represented by Natalia Blaskovich, Attorney at Law. Employer participated by Douglas Wright, Human Resource Manager; Michael French, Second Shift Supervisor and Curt Martin, Vice President Manufacturing. Exhibits One and Two and A through G were admitted into evidence.

ISSUE:

The issue in this matter is whether 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: Claimant went off work due to a non-work-related condition. Claimant was given work restrictions of 25 pounds lifting and no repetitive work with the right hand. Employer will accommodate non-work-related restrictions if a job is available. Employer could not accommodate claimant as first priority for light duty jobs was given to work-related injuries. No work was available as the only job was taken by a person with a work-related injury. Claimant's work restrictions are still in place to date of hearing.

REASONING AND CONCLUSIONS OF LAW:

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.

Inasmuch as the injury and pregnancy was not work-related and the treating physician has not released the claimant to return to work full duty, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work. Benefits shall be denied effective January 21, 2010.

DECISION:

The decision of the representative dated February 23, 2010, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective the week ending January 24, 2010, until claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs