

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYRA N RICE
Claimant

APPEAL NO: 18A-UI-09417-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DSM HEALTHCARE MANAGEMENT
Employer

OC: 08/12/18
Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 6, 2018, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 27, 2018. The claimant participated in the hearing. The employer did not respond to the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice.

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 hired as a CNA at Des Moines Healthcare Management on October 12, 2016, and is still employed there. On April 1, 2018, the claimant went to PRN status because her mother is ill and she needed weekends off to care for her. The claimant then worked full-time hours Monday through Thursday.

The claimant became pregnant and has a history of preterm labor. Her doctor imposed lifting restrictions, stating she could not lift more than 10 pounds, and said the claimant needed to sit for 15 minutes every hour. The claimant notified the employer of her restrictions August 30, 2018, and the employer offered her two days of work per week, 7:00 a.m. to 2:00 p.m. The employer told her it would deduct the 15 minutes of sitting time per hour so the claimant declined to work the two days per week. The employer called the claimant one week later and offered her a dietary position at a lower rate of pay and the claimant said no because of the pay.

The claimant had a doctor appointment September 24, 2018, and was released to return to work without restrictions effective October 1, 2018 (Claimant's Exhibit A).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not 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. 871-24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Iowa Admin. Code r. 871-24.23(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.

The claimant is still employed with this employer and consequently must be able to perform all aspects of her job to be considered able and available for work because she did not suffer a work-related illness or injury. She was effectively on a leave of absence while restricted from performing all the duties of her job. Accordingly, the claimant is not considered able and available for work through September 30, 2018.

That said, however, the claimant's physician released her to return to work without restrictions effective October 1, 2018. Therefore, the claimant is able and available for work effective October 1, 2018. If she presents herself for work and the employer does not have work for her to perform to the same extent as she was performing it prior to her work restrictions, she will be eligible for full or partial benefits.

DECISION:

The September 6, 2018, reference 01, decision is modified in favor of the claimant. The claimant is not able and available for work through September 30, 2018, and is able to work and available for work effective the week ending October 5, 2018. Benefits are allowed effective October 5, 2018, if the claimant is not performing work in the same pattern as she was working prior to the work restrictions being imposed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn