

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEFF L ESTRADA
Claimant

JIM BAIER INC
Employer

APPEAL NO. 14A-UI-09297-GT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/17/14
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 5, 2014, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 26, 2014. Claimant participated personally. Employer participated by Alan Hecht, General Manager.

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 was a full-time employee prior to being discharged. Claimant was not able to attend work on many occasions because his daughter was very ill.

Since his separation from employment claimant has continued to struggle with his daughter's illness. She has had multiple surgeries, and he has to pick her up from school on early out days. Claimant wants to work, but it is not possible for him to work full-time because of the care that is required for his daughter.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Admin. Code r. 871-24.23(1), (16), (35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(16) Where availability for work is unduly limited because a claimant is not willing to work during the hours in which suitable work for the claimant is available.

(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 claimant's daughter is still very ill and requires a lot of claimant's attention and time, claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains adequate child care for his sick child which would allow him to work full-time. Once childcare has been arranged, claimant should contact his local workforce development office and provide documentation.

DECISION:

The decision of the representative dated September 5, 2014, reference 02 is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective August 17, 2014.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/pjs