

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BEATRIZ CAMPOS DE MOJICA
Claimant

APPEAL NO. 11A-UI-08931-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AXCESS STAFFING SERVICES LLC
Employer

OC: 05/08/11
Claimant: Respondent (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 28, 2011, reference 02, which held claimant able and available for work. After due notice, a telephone conference hearing was scheduled for and held on July 29, 2011. Claimant participated personally and was represented by Jeremy Flaming, attorney at law, with witness Rigoberto De Mohica Campos. Employer participated by Tom Kuiper, TALX hearing representative, and Dennis Panosh, on-site manager. Exhibits A and B 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 having considered all of the evidence in the record, finds: claimant sustained a work-related injury October 11, 2011. Claimant was off work until May 8, 2011. Claimant was released to full-duty work. Claimant offered herself for further assignment. No further work was available. Claimant was to come to work about 45 minutes to an hour early to sign up for work. Claimant had followed this procedure prior to the work injury. Claimant did come in 45 minutes early after the release of May 8, 2011.

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 was work-related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. Claimant has made herself available at the times necessary to obtain work from this employer. Claimant is available for work due to her proper report in time. Benefits shall be allowed effective May 8, 2011.

DECISION:

The decision of the representative dated June 28, 2011, reference 02 is affirmed. Claimant is eligible to receive unemployment insurance benefits, effective May 8, 2011, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw