

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLIE L BEAMES
Claimant

APPEAL NO. 11A-UI-03146-M2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CIGARETTE OUTLET INC
Employer

OC: 01/23/11
Claimant: Appellant (1-R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 10, 2011, reference 03, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on April 4, 2011. Employer participated. Employer failed to respond to the hearing notice and did not participate.

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: The claimant reduced the hours she would work considerably, and sometimes to zero per week, due to a non-work-related illness beginning in November of 2010. She is not able and available for work. She resigned the employment on or about April 1, 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 illness was not work-related, and the claimant substantially reduced her availability for work (sometimes to zero), the claimant has not established the ability to work. Benefits are withheld.

DECISION:

The decision of the representative dated March 10, 2011, reference 03, is affirmed and remanded. Claimant is not eligible to receive unemployment insurance benefits, effective January 23, 2011. The issue of the separation from employment is remanded to claims for a determination.

Stan McElderry
Administrative Law Judge

Decision Dated and Mailed

srm/kjw