

UNEMPLOYMENT INSURANCE APPEALS

HEATHER A JOHNSON
Claimant

HOTEL MANAGEMENT AND CONSULTING
Employer

APPEAL NO. 17A-UI-04624-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/26/17
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 28, 2017 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 19, 2017. Claimant participated personally. 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 considered all of the evidence in the record, finds: Claimant stopped working for employer on or around March 10, 2017 as she gave birth to a child on that date. Claimant told employer shortly before she left on maternity leave that she would return to work in four weeks.

Two weeks after claimant gave birth, employer contacted claimant to tell her that they needed to fill claimant's position and that she no longer had a job waiting for her when her maternity leave was over. Claimant stated that she offered to return to work immediately in hopes of retaining her employment. Employer declined claimant's offer as employer had already hired someone to take claimant's position.

Claimant then immediately began a job search on or around March 26, 2017.

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.

Inasmuch as the pregnancy was not work-related, but the claimant expressed a desire to return to work only two weeks after the childbirth and has been searching for a job since that date, the claimant has established the ability to work. Benefits shall be allowed effective March 26, 2017.

DECISION:

The decision of the representative dated April 28, 2017, reference 02 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective March 26, 2017, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn