

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AFET TOTIL**  
Claimant

**APPEAL NO. 10A-UI-13321-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT & COMPANY**  
Employer

**OC: 07/18/10**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from a representative's decision dated September 14, 2010, reference 01, which denied benefits effective July 18, 2010 upon a finding that claimant was not able to perform work due to a medical condition. After due notice a telephone hearing was held on December 6, 2010. Claimant participated personally. The employer participated by Ms. Jenny Mora, Employment Manager. Official interpreter was Agatha Sisto.

**ISSUE:**

The issue is whether the claimant meets the availability requirements of the law.

**FINDINGS OF FACT:**

Having considered all of the evidence in the record, the administrative law judge finds: Afet Totil began employment with Swift & Company on February 9, 2009 and worked as a full-time production worker. On April 19, 2010, Ms. Totil presented medical limitations imposed by her doctor due to the claimant's pregnancy. Swift & Company accommodated the claimant's physical limitations. On July 20, Ms. Totil was unable to work due to abdominal pain. Ms. Totil did not report back to work based upon statements from her physician indicating the claimant should not continue working because of her medical condition related to her pregnancy. At the time of hearing the claimant has not provided a release to her employer or attempted to return to her employment.

**REASONING AND CONCLUSIONS OF LAW:**

An unemployed individual shall be eligible to receive unemployment insurance benefits only if the individual is able to work, available for work and earnestly and actively seeking work.

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.

The evidence in the record establishes that Ms. Totil had initially been allowed to continue working with medical limitations imposed by her physician but was unable to continue working after July 20, 2010 because of a determination by her physician that she was unable to perform work due to medical issues associated with her pregnancy. Documentation provided to the employer indicated the claimant's estimated due date was October 18, 2010 and that the claimant would require six to eight weeks post partum recovery time following the birth of her baby. At the time of hearing the claimant had not returned to work or provided documentation to the employer indicating that she was able to return to work. Because the claimant is not able to work, she does not meet the availability requirements of the Iowa Employment Security Law and benefits are denied as of July 18, 2010.

#### **DECISION:**

The representative's decision dated September 14, 2010, reference 01, is affirmed. The claimant is not able to work and does not meet the availability requirements of the law. Unemployment insurance benefits are denied as of July 18, 2010.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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