

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAURA B ARCHER
Claimant

APPEAL NO: 06A-UI-08190-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 07-02-06 R: 03
Claimant: Appellant (1)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 10, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 31, 2006. Claimant participated. Employer participated through Darin Turner and Laura Fulton, store director, and was represented by David Williams of TALX UC eXpress.

ISSUE:

The issue is whether claimant is able to and available for work effective July 2, 2006.

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant is employed as a part-time stocker (two shifts per week) and cashier (one shift per week). She requested to work only daytime shifts and not evenings or weekends when more cashier shifts are available. On May 1 claimant found out she is pregnant and has been restricted from lifting more than 20 pounds, which is required of her stocker duties. Her due date is December 29, 2006 and she is subject to the restrictions until then. In this case claimant seeks partial unemployment benefits for the portion of her regular job duties (stocking) she is not able to perform.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work

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".

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 medical practitioner and has not been released as being able to work.

Inasmuch as the pregnancy and related restrictions were not work-related and the treating physician has not released the claimant to return to work without restriction, the claimant has not established her ability to work. Employer is not obligated to accommodate a non-work-related medical condition, thus until claimant is released to perform her full work duties, she is not considered able to or available for work and is not eligible for partial unemployment insurance benefits.

DECISION:

The representative's decision dated August 10, 2006, reference 01 is affirmed. The claimant is not able to work and available for work effective July 2, 2006. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless she is involuntarily separated before that time.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs