

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CAROL A ZIESER
Claimant

FULL CIRCLE SERVICES INC
Employer

APPEAL NO. 14A-UI-09774-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/17/14
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 9, 2014 reference 02, which held claimant not able and available for work beginning with the date of August 31, 2014. After due notice, a hearing was scheduled for and held on October 15, 2014. Claimant participated personally. Employer participated by Matt Archibald and Courtney Kemmerer.

ISSUES:

Whether claimant is able and available for work.

Whether claimant was overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was on maternity from employer from June 15, 2014 through August 30, 2014. As of August 31, 2014, claimant was able and available for work as she was no longer on leave.

Claimant is a part-time employee for employer who worked providing occasional care for individuals at their residences. Prior to claimant's maternity leave she handled two clients, with one being in Independence, Iowa. This particular client was moved to another provider while claimant was on maternity leave. Claimant was given the opportunity to pick up an additional client at the same wages, in approximately the same area, at approximately the same hours. Claimant declined this offer, as it would interfere with claimant's daycare for her new child.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 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, the claimant has not established the ability to work during the dates of June 15 through August 30, 2014. Benefits are withheld during those dates. Subsequent to the date of August 30, 2014, claimant was not able and available to work the part-time hours she had previously worked.

This court has additionally looked through claimant's benefit payment history and has found no payments concerning this employer prior to the week of September 6, 2014. As such is the case, there is no overpayment found. This case shall be locked for future payments.

DECISION:

The decision of the representative dated September 9, 2014, reference 02, is affirmed. Claimant is not eligible to receive unemployment insurance benefits during the dates of June 15, 2014 through August 30, 2014. Claimant is found not to be able and available for work as of August 31, 2014. Any UI payments received by claimant after August 31, 2014 shall be deemed overpayments.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

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