

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEIDRE L PRUGH
Claimant

APPEAL NO: 14A-UI-04204-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03/16/14

Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Deidre L. Prugh (claimant) appealed a representative's April 10, 2014 decision (reference 03) that concluded she was not qualified to receive unemployment insurance benefits because she was not able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 12, 2014. The claimant participated in the hearing. A review of the Appeals Section's conference call system indicates that Care Initiatives (employer) failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant worked full time as a certified nursing assistant (CNA) for the employer from October 7, 2013, to March 13, 2014. The job description states that the claimant's job involves regular lifting of at least 50 pounds.

The claimant visited her doctor on March 14, 2014. She is pregnant with a due date in August 2014. Her doctor prepared a statement to submit to her employer. The doctor gave her a note with a restriction that she not lift more than 30 pounds. The claimant delivered that note to the employer on March 14. The employer advised her that it could not accommodate a non-work-related weight restriction and she would not be allowed to work until she could perform the duties in her job description. She was told she was being placed on an eight-week leave of absence through May 9.

The claimant has not voluntarily quit employment and has not been discharged by the employer. The claimant did not request a leave of absence from the employer and is ready and willing to return to work when the employer allows her to work.

The claimant filed a new claim for unemployment insurance benefits with an effective date of March 16, 2014. She remains subject to a 30-pound weight restriction but has no other work restrictions. There are jobs the claimant can perform despite her work restrictions.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Rule 871 IAC 24.22(1). The evidence establishes that the claimant was able to perform gainful work, just not work that requires lifting of over 30 pounds. There is unquestionably work available in the labor market meeting such restrictions. The claimant has demonstrated that she is physically able to work in some gainful employment.

The rules further provide that a claimant is considered unavailable for work if the claimant requested and was granted a leave of absence, since the period is deemed a period of voluntary unemployment. Rule 871 IAC 23(10). In this case, however, the claimant did not request the leave of absence so that she cannot be considered to have been voluntarily unemployed. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's April 10, 2014 decision (reference 03) is reversed. The claimant is currently able to work and available for work effective March 16, 2014. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs