

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMBER R THURSTON**  
Claimant

**APPEAL NO. 07A-UI-00409-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DILLARD'S INC**  
Employer

**OC: 11/12/06 R: 04**  
**Claimant: Respondent (1)**

Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

Dillard's, Inc. (employer) appealed a representative's December 12, 2006 decision (reference 09) that concluded Amber R. Thurston (claimant) was qualified to receive unemployment insurance benefits as of November 26, 2006. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 11, 2007 in conjunction with one related appeal, 06A-UI-12267-DT. The claimant participated in the hearing. Tammy Dill appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 started working for the employer on May 15, 2006. She worked full-time as a sales associate at the employer's Davenport, Iowa store. Her last day of work was October 25, 2006. The claimant went into labor on October 25 while at work. She had to leave work before the end of her shift; and she gave birth early the next morning. Her doctor released her to return to work as of Wednesday, November 29. She has not sought to return to work with the employer. The claimant established an unemployment insurance benefit year effective November 12.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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 physician and has not been released as being able to work.

The claimant was not released to return to work until November 29, halfway through the week. She has not sought to return to work with the employer; however, since as determined in the concurrently issued decision in 06A-UI-12267-DT the separation was a discharge rather than a voluntary quit, the claimant is not required to seek to offer to return to work with the employer upon her release in order to be able and available for work. Iowa Code § 96.5-1-d. She, therefore, was not eligible to receive unemployment insurance benefits until the beginning of that week, but is eligible to receive unemployment insurance benefits as of November 25, 2006.

**DECISION:**

The representative's December 12, 2006 decision (reference 09) is affirmed. The claimant was able to work and available for work effective November 29, 2006. The claimant is qualified to receive unemployment insurance benefits as of November 25, 2006, if she is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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