

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KAYLEE M MORSE
Claimant

NEW HORIZONS FAMILY ENHANCEMENT
Employer

APPEAL 17A-UI-08174-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/01/17
Claimant: Appellant (2)**

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from the August 4, 2017, (reference 04) unemployment insurance decision that denied benefits based upon her inability to perform work from January 1, 2017 through February 4, 2017. The parties were properly notified of the hearing. A telephone hearing was held on August 30, 2017. The claimant participated and testified. The employer did not participate.

ISSUE:

Was the claimant able to work and available for work from January 1, 2017 through February 4, 2017?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full time as a director care worker. Beginning the week of January 1, 2017, the employer notified claimant it was going to temporarily reduce her hours in preparation for her upcoming maternity leave in order to allow proper training for the individual who would be replacing her. Claimant testified that, while she and her doctor had talked about possibly reducing her hours towards the end of her pregnancy, she had never felt this was necessary and made no such request. Claimant further testified she specifically advised the employer that she planned on working until the baby was born. Claimant continued to work a reduced hour schedule until the week beginning January 23, 2017, when she was taken off the schedule all together, again through no request of her own. Claimant's baby was born on February 3, 2017. Claimant was cleared by her doctor to return to work six weeks later, but was not actually put on the schedule by the employer until April 10, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work from January 1, 2017 through February 4, 2017.

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".

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.

Iowa Admin. Code r. 871-24.23(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.

To be 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); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of determining that individual's eligibility for unemployment benefits must necessarily take into

consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Claimant indicated to her employer that she would be willing and able to work up until the birth of her child. Though claimant and her doctor did discuss reducing her hours towards the end of her pregnancy, she made no such request to the employer. Despite that fact that claimant was able to work, the employer made the business decision to reduce and then eliminate her hours in the final five weeks of her employment before her child was born. Claimant has established she was not restricted from working until her baby was born on February 3, 2017. Accordingly, benefits are allowed, provided she is otherwise eligible.

DECISION:

The August 4, 2017, (reference 04) unemployment insurance decision is reversed. The claimant was able to work and available for work from January 1 through February 4, 2017. Benefits are allowed for this time period, provided claimant is otherwise eligible.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs