

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REGENIA R BARNES
Claimant

APPEAL NO. 07A-UI-08936-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08-05-07 R: 01
Claimant: Appellant (4)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 17, 2007, reference 03, decision that found the claimant not able to and available for work and thus not eligible unemployment insurance benefits. After due notice was issued, a hearing was held on October 3, 2007. The claimant did participate. The employer did not participate. Claimant's Exhibit A was received.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was suffering from irritable bowel syndrome and under a doctor's care and unable to work from July 15, 2007 until a medication change on August 13, 2007 relieved her symptoms. Since the doctor provided the correct medication the claimant has been able to work beginning on August 13, 2007.

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 from July 15, 2007 through August 13, 2007.

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".

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 too physically ill to work from July 15 until August 13, 2007. The claimant's physician has indicated that she is now able to work. The claimant is able to work effective August 13, 2007.

DECISION:

The representative's decision dated September 17, 2007, reference 03, is modified in favor of the appellant. The claimant is able to work and available for work effective August 13, 2007. Benefits are allowed, effective August 13, 2007, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css