

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANTOINETTE FLOWERS
Claimant

STAR HOTELS IA LLC
Employer

APPEAL NO. 19A-UI-02972-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/10/19
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated April 4, 2019 reference 08, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on April 29, 2019. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Shortly after claimant was hired, she discovered that she was pregnant. Her pregnancy has been difficult since she found out about it on Valentine's Day. Since that date, claimant had to call off a great number of days for issues surrounding dizziness and transportation issues. Claimant continues to have the dizziness issues to this day and stated that she is unable to do the day-to-day duties of cooking or cleaning without getting dizzy so her mother does those acts for claimant.

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

Inasmuch as the pregnancy was not work-related and the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Claimant stated that she continues to have dizziness when she is up to do ordinary tasks. As she cannot do these tasks, she is not able and available for work. Benefits are withheld.

DECISION:

The decision of the representative dated April 4, 2019, reference 08 is affirmed. Claimant is not eligible to receive unemployment insurance benefits as she is not able and available for work.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn