

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHERI N FOOTE
Claimant

APPEAL NO. 07A-UI-08270-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HMC INC
Employer

OC: 07/08/07 R: 03
Claimant: Respondent (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated August 20, 2007, reference 02, which held the claimant eligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 12, 2007. The claimant participated. The employer participated by Gail Lunquist. Exhibits One and Two were received into evidence.

ISSUE:

At issue in this matter is whether the 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: The claimant was temporarily laid off work on or about June 25, 2007 when the employer had no work that fit a 20 pound lifting limitation that had been imposed upon the claimant due to her pregnancy.

After being laid off from her primary employer, Ms. Foote has attempted to secure full-time employment that is consistent with the 20-pound lifting limitation imposed by her physician. The claimant has made the in-person contacts on a regular basis in an attempt to find work that is available and has not otherwise unduly limited her availability.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes based upon the evidence in the record that the claimant is able and available for work within the meaning of the Iowa Employment Security Act. After being laid off work the claimant has actively and earnestly sought reemployment by personally contacting perspective employers and seeking full-time employment that does not violate the lifting restrictions imposed by her physician. The evidence established that the claimant has actively sought reemployment on a regular basis and has not unduly limited herself beyond the lifting limitation that her doctor has imposed.

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.

For reasons stated herein the administrative law judge finds that the claimant is able and available for work and is actively and earnestly seeking work and gainful employment engaged in others as a means of livelihood.

DECISION:

The representative's decision dated August 20, 2007, reference 02, is hereby affirmed. The claimant is able and available for work and eligible to receive unemployment insurance benefits, providing that she meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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