

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SUSAN MCBETH
Claimant

APPEAL NO: 14A-UI-13236-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

TENCO INDUSTRIES INC
Employer

**OC: 11/23/14
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 16, 2014, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on January 21, 2015. The claimant participated in the hearing. Angela Lennie, Human Resources Director and Desiree Bradley, Human Resources Clerical Assistant, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a vocational instructor at Tenco Industries until September 24, 2014. She separated from her employment when she was unable to obtain a full release to return to work after exhausting her FML. The claimant has been released to seek work that does not involve prolonged standing or walking without a break.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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.

While the claimant may not be able to perform her previous job with the employer, she is able to perform other jobs within the community as long as they do not involve prolonged standing or walking without a break. That means she is able and available to perform some type of work effective November 20, 2014, which is all that is required for an employee to be considered able and available for work. Accordingly, benefits are allowed.

DECISION:

The December 16, 2014, reference 02, decision is affirmed. The claimant is able to work and available for work effective November 20, 2014. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs