

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TONDA M BOLINGER
Claimant

APPEAL NO. 08A-UI-07675-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRA INTERNATIONAL LLC
Employer

**OC: 04-13-08 R: 03
Claimant: Appellant (1R)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the August 19, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on September 9, 2008. The claimant did participate. The employer did not participate.

ISSUE:

Is the claimant able to and available for work effective May 20, 2008?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a production worker full time beginning in March 2006. She was laid off during April 2008. When called back to work on May 20, 2008 the claimant would not return to work because her blood pressure was high and she did not want to stand for ten hour shifts due to her pregnancy. The employer would not accommodate the claimant's request to work less than ten hours per day. The claimant did not provide a doctor's excuse to limit her hours of work, because the employer told her even if she did provide a doctor's excuse to limit her job duties or hours of work, the employer does not accommodate work restrictions with light duty work due to pregnancy. When the employer would not accommodate the claimant's request for light duty work or reduced hours she quit. No fact-finding has been held on the claimant's separation from work. The claimant's baby was born on July 22, 2008 and her doctor wrote her a letter indicting she would be released to return to work on September 5, 2008 with no work restrictions.

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 effective from May 20, 2008 through September 5, 2008.

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 employer is not obligated to accommodate non-work-related work restrictions such as those incurred due to pregnancy. Even if the claimant had obtained a work restriction from her doctor limiting her job duties or hours of work due to her personal health issues surrounding her pregnancy, an employer is not required to accommodate those restrictions. Nor is an employer obligated to accommodate or work with an employee who does not believe that they can perform their full job duties or requirement due to health issues related to a pregnancy. Inasmuch as the pregnancy was not work-related and the claimant did not believe she could work the full job duties required by the employer, the claimant has not established ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work on September 5, 2008.

REMAND:

The separation issue delineated in the findings of fact is remanded for an initial review and determination.

DECISION:

The representative's decision dated August 19, 2008, reference 01, is affirmed. The claimant is not able to work and available for work effective May 20, 2008 through September 5, 2008. Benefits are withheld until such time as the claimant obtains a full medical release to return to work on September 5, 2008.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs