

Ms. Brierly is not able to tolerate intense heat and/or being in direct sunlight for extended periods. Ms. Brierly was most recently employed through Express Services temporary employment agency. Ms. Brierly's most recent assignment ended on July 15, 2005. On or about August 3, Express Services offered Ms. Brierly a new assignment as a road construction flag person. The position would have required Ms. Brierly to be outdoors in direct sunlight for extended periods. Ms. Brierly declined the assignment for health reasons. Ms. Brierly has provided a medical release from her doctor that indicates she is able to work, just not in direct sunlight for extended periods.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Ms. Brierly has been able and available for employment since July 15, 2005.

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.

The evidence in the record establishes that Ms. Brierly is physically and mentally able to work in gainful employment that does not require her to be in direct sunlight for extended periods of time. Ms. Brierly meets the Able & Available requirements of Iowa Code Section 96.4(3) and 871 IAC 24.22(1)(a) and has met those requirements since July 15, 2005.

DECISION:

The Agency representative's August 26, 2005, reference 05, decision is reversed. The claimant has, in fact, been both able and available for work since July 15, 2005. The claimant is eligible for benefits, provided she is otherwise eligible.

JT/kjf