

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DADAKPOYE T JOHNSON

Claimant

APPEAL NO. 08A-UI-04941-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EMPLOYMENT SERVICES

Employer

**OC: 04-06-08 R: 03
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 19, 2008, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on June 9, 2008. The claimant did participate. The employer did participate through Kathy Clarahan, Human Resources Director. Employer's Exhibit One was received. Claimant's Exhibit A was received.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant works as a certified nurse's aide and was off work after delivering her baby on March 5, 2008. The claimant was released to return to work on May 27, 2008. She returned to work on May 31, 2008. The claimant was off on maternity leave at her physician's request from March 5, 2008 until May 27, 2008.

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 from March 5, 2008 through May 27, 2008.

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".

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.

Inasmuch as the medical condition, her pregnancy, was not work-related and the treating physician removed the claimant from work from March 5, 2008 through May 27, 2008 she was not able to and available for work for that time period. The claimant has been released to return to work and has returned to work at the same position she had prior to her maternity leave.

DECISION:

The representative's decision dated May 19, 2008, reference 06, is affirmed. The claimant is not able to work and available for work effective March 5, 2008 through May 27, 2008. Benefits are withheld for that time period.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs