

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONNA POTTORFF
Claimant

APPEAL NO. 07A-UI-02252-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARGILL MEAT SOLUTIONS CORP
Employer

OC: 01/21/07 R: 03
Claimant: Appellant (2)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Donna Pottorff (claimant) appealed an unemployment insurance decision dated February 27, 2007, reference 03, which held that she was not eligible for unemployment insurance benefits because she was not able to perform work for Cargill Meat Solutions Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 21, 2007. The claimant participated in the hearing with Attorney Phil Miller. The employer participated through Katie Kiercks, Assistant Human Resources Manager and Stephanie Paxton, Assistant House Services Manager. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time utility worker on June 22, 1998. She sustained a work-related injury on October 25, 2004, and subsequently worked on an intermittent basis with temporary restrictions. The employer made work for the claimant but she was not working in a specific job. The claimant's physician made her restrictions permanent on January 8, 2007, and the employer gave her two weeks to bid into a job that was within her permanent restrictions. She did not bid into another job and was taken off work on January 24, 2007. The claimant is still employed for the next 18 months but is on unpaid medical leave since she cannot carry out the essential functions of her job duties. She is capable of performing clerical work and has experience doing this.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the

record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). Although the claimant can no longer perform her previous occupation, she is able to perform clerical work and has experience in this area. The claimant does meet the availability requirements of the law and qualifies for unemployment insurance benefits, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated February 27, 2007, reference 03, is reversed. The claimant is able to work and benefits are allowed, provided she is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css