

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TERESA L PETERSON**  
Claimant

**APPEAL NO. 08A-UI-10821-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASSOCIATED MILK PRODUCERS INC**  
Employer

**OC: 10-05-08 R: 01  
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the November 7, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on December 4, 2008. The claimant did participate and was represented by Willis Hamilton, Attorney at Law. The employer did participate through Jerry Johnson, Administrative Manager, and Ann Carpenter, Human Resources employee. Claimant's Exhibit A was received.

**ISSUE:**

Is 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: Claimant is still employed but has been off work since June 2008, when she had a hip replacement. On September 12, 2008 the claimant offered to return to work with work restrictions of medium work only. The claimant alleges that the hip replacement was necessitated as a result of a work-related injury. The employer denies that the claimant's hip replacement was the result of any work-related injury. The claimant has no medical opinion to support her contention that her hip replacement and the current work restrictions she has as a result of that medical treatment was the result of a work-related injury.

The employer does not allow employees with non-work-related work restrictions to return to work until they have been released by their physician for full-duty, unrestricted work.

The claimant has not looked for work with any other employer. She does not know whether she would be able to perform her regular job for the employer because of the climbing required and the machine preparation required. The employer does not have sweeping or janitorial jobs available, because of layoffs.

## 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.

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.

Without any medical opinion, the administrative law judge cannot conclude that the claimant's hip replacement was due to any type of work-related injury. Thus, the determination is that the claimant's work restrictions are related to a non-work-related injury. The claimant is not even sure she would be able to perform her regular job with her current work restrictions. The claimant has not sought work for any other employer. The administrative law judge cannot conclude that the claimant is physically able to perform any type of work.

Inasmuch as the injury was not work-related and the treating physician has not released the claimant to return to work without work restriction, 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.

**DECISION:**

The representative's decision dated November 7, 2008, reference 01, is affirmed. The claimant is not able to work and available for work effective September 12, 2008. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/kjw