

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DOROTHY KELLY
Claimant

APPEAL NO. 10A-UI-09013-VS

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEW CHOICES INCORPORATED
Employer

OC: 10/11/09
Claimant: Respondent (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated June 17, 2010, reference 05, which held claimant eligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on February 24, 2011, in Davenport, Iowa. Claimant participated. Employer participated by Sarah Lees, human resources coordinator. The employer was represented by Ralph Heninger, attorney at law. This case was heard in conjunction with 10A-UI-09012-VS and the record in that case serves as the record in this case.

ISSUE:

Whether the claimant was able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The claimant established an original claim for benefits with an original claim date of October 11, 2009. This employer is not a base period employer. The separation of employment from this employer occurred on May 14, 2010. The claimant was paid benefits from the week ending May 15, 2010, through the week ending June 12, 2010. This employer was not charged for these benefits because the employer was not a base period employer.

The representative's decision indicated that the claimant was eligible to receive unemployment insurance benefits as of April 30, 2010.

REASONING AND CONCLUSIONS OF LAW:

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 employer challenges the decision that the claimant was able and available for employment as of April 30, 2010. The evidence established that the claimant was suffering from blisters due to a work-related injury. The claimant was actually not separated from her employment until May 14, 2010. The claimant testified that she was able to work at the time of her separation and there was no contrary evidence from the employer. The claimant was not paid any unemployment compensation benefits until the week ending May 15, 2010 and those benefits were not charged to this employer.

The administrative law judge will correct the representative's decision to show that the claimant was able and available for work as of May 14, 2010.

DECISION:

The decision of the representative dated June 17, 2010, reference 05, is modified in favor of the appellant. The claimant was able and available for work as of May 14, 2010.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs