

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SARAH SHANNON

Claimant

APPEAL NO. 07A-UI-00358-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FIRST HOSPITALITY GROUP

Employer

**OC: 11/12/06 R: 02
Claimant: Appellant (2)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Sarah Shannon (claimant) appealed an unemployment insurance decision dated January 8, 2007, reference 03, which held that she was not eligible for unemployment insurance benefits because she was not able to work for the First Hospitality Group (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 25, 2007. The claimant participated in the hearing. The employer participated through Sara Baker, General Manager. 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 front desk clerk on June 8, 2006 and continued working full-time until November 12, 2006 when her hours were cut due to slow business. She was pregnant and unable to work on December 1, 3 and 4, 2006 due to medical advice. The claimant went on maternity leave on December 15, 2006 and has been released to return to work without restrictions on January 31, 2006.

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.

871 IAC 24.23(29) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(29) Failure to work the major portion of the scheduled workweek for the claimant's regular employer.

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). The evidence confirms the claimant's full-time hours were cut due to business being slow. Additionally, she was not able to work on December 1, 3 and 4 due to medical reasons but was available to work the major portion of the scheduled workweek both weeks. The claimant left on maternity leave on December 15, 2006 and is returning to work on January 31, 2007. She does meet the availability requirements except for the six-week period ending January 27, 2007 when she was on maternity leave. Benefits are allowed, provided she is otherwise eligible.

DECISION:

The unemployment insurance decision dated January 8, 2007, reference 03, is reversed. The claimant meets the availability requirements of the law except for the six-week period ending January 27, 2007, during which benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css