

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BARBARA G PETERSON
Claimant

APPEAL NO. 10A-UI-03007-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CEDAR BEND TIRE LLC
Employer

OC: 10-25-09
Claimant: Respondent (2)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 19, 2010, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on April 9, 2010. The claimant did participate. The employer did participate through John Fedro, Owner and Manager.

ISSUE:

Is the claimant able to and available for work effective September 26, 2009?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a secretary full time beginning September 15, 2008. The claimant was off work from September 29, 2009 and under doctor's restrictions due to a non-work-related illness until February 11, 2010. The employer would not accommodate the claimant's work restrictions for her non-work-related illness. As of February 11, 2010 the claimant's physician released her to return to work without restrictions.

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 September 29, 2009 until February 11, 2010.

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 was not work-related and the treating physician did not release the claimant to return to work without restriction until February 11, 2010 the claimant has not established her ability to work. Employer is not obligated to accommodate a non-work-related medical condition, thus until claimant was released to perform her full work duties, she is not considered able to or available for work.

DECISION:

The representative's decision dated February 19, 2010 (reference 03) is reversed. The claimant is not able to work and available for work for the period from September 29, 2009 through February 11, 2010.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs