

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TWYLA VANDER LINDEN**  
Claimant

**APPEAL NO: 08A-UI-08113-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEAM STAFFING SOLUTIONS INC**  
Employer

**OC: 07/06/08 R: 04  
Claimant: Appellant (2)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Twyla Vander Linden (claimant) appealed an unemployment insurance decision dated September 4, 2008, reference 01, which held that she was not eligible for unemployment insurance benefits because she voluntarily quit her employment with Team Staffing Solutions, Inc. (employer) without good cause attributable to the employer. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 24, 2008. The claimant participated in the hearing. The employer participated through Sarah Fiedler, Human Resources Claims Administrator. 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 is employed as a temporary clerical and manufacturing worker from November 7, 2007 through the present. She has several non-work-related medical restrictions and quit an assignment on June 30, 2008 after two hours because the work was not within her restrictions. The claimant did not quit her employment and continues to be able and available for work.

**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. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood.

871 IAC 24.22(1). Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. See 871 IAC 24.22(1)(a).

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). She has provided medical evidence confirming that she is medically able to work. The employer contends the claimant should be disqualified because she quit her assignment. While she did quit an assignment after two hours of work, she did not quit her employment. The claimant continues to be employed with the employer and is available for additional assignments.

**DECISION:**

The unemployment insurance decision dated September 4, 2008, reference 01, is reversed. The claimant qualifies for unemployment insurance benefits, provided she is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed  
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