

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TETA WANTOE**  
Claimant

**APPEAL NO. 11A-UI-08148-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 3/20/11**  
**Claimant: Appellant (2-R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated June 16, 2011, reference 02, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on July 5, 2011. Claimant participated personally. Exhibit A was admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was pregnant. Her doctor authorized her to continue working until she delivered the baby. (See Ex. A). She delivered a baby on June 28, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

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.

It is unclear why the Unemployment Division found the claimant unable to work. The only evidence in the record indicated that she could work up until the delivery of her child. Benefits shall be allowed effective June 12, 2011. Claimant was not able to work on June 28, 2011, the date she gave birth. This matter shall be remanded to the Unemployment Division to determine when she became available to return to work following the birth of her child.

**DECISION:**

The decision of the representative dated June 16, 2011, reference 02 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective June 12, 2011, provided claimant meets all other eligibility requirements. Claimant would not have been able to work on June 28, 2011. The matter is remanded to the Unemployment Division to make a determination as to when she became available to return to work following the birth of her child.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/pjs