

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA S CARMAN**  
Claimant

**APPEAL NO. 07A-UI-08605-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARE INITIATIVES**  
Employer

**OC: 07/22/07 R: 03**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 28, 2007, reference 02, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on September 25, 2007. Claimant participated. Employer participated through Kim Rutledge and was represented by Jennifer Coe of Johnson & Associates.

**ISSUE:**

The issue is whether claimant is able to and available for work effective July 22, 2007.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed and was given lifting restrictions during the seventh month of her pregnancy. Her son was born August 26, 2007. She was released to return to work without restrictions as of September 10, 2007 but has not provided the release to employer. She intends to return to work on January 14, 2008, but does not have written permission for leave beyond October 22, 2007.

**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 effective July 22, 2007.

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 for which work restrictions were issued was not work-related, and the treating physician released her to work as of September 10, 2007 but claimant has opted not to return to work until January 14, 2008, she was not able to work through September 9, 2007 and is not available for work effective September 10, 2007. At this point, employer expects her to return to work on October 22, 2007 and has nothing in writing for continued leave after that point. Employer is not obligated to accommodate a non-work-related medical condition; thus, until claimant is released to perform her full work duties **and** returns to offer services, she is not considered able to or available for work.

#### **DECISION:**

The representative's decision dated August 28, 2007, reference 02, is affirmed. The claimant is not able to work and available for work effective July 22, 2007. Benefits are withheld until such time as the claimant obtains a full medical release to return to work and returns to offer her services unless she is involuntarily separated before that time.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw