

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LISA C FULLER
Claimant

HORMEL FOODS CORPORATION
Employer

APPEAL 14A-UI-08179-G
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/13/14
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 1, 2014, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 23, 2014 in Spencer, Iowa. Claimant participated in person, and by T. J. Braunschweig, Attorney at Law. Employer participated in person by Frank Velasquez, Human Resources Manager. Employer's Exhibit One and claimant's Exhibits A through C were 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 stated during the hearing on this date that she was not able to perform work at this time. She explained that as a result of her separation of employment and the events that occurred she is not capable of working, or seeking work.

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(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 medical practitioner and has not been released as being able to work.

Inasmuch as the claimant has not established the ability to work. Benefits are withheld until such time as the claimant is able to show that she is ready to return to work. Benefits shall be denied effective July 13, 2014.

DECISION:

The decision of the representative dated August 1, 2014, reference 02, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective July 13, 2014, until such time that she is able to show that she is able to and available for work.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/css