

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CAROL A ZIESER
Claimant

FULL CIRCLE SERVICES INC
Employer

APPEAL NO. 14A-UI-10044-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/17/14
Claimant: Respondent (2)

Iowa Code § 96.4-3 – Able and Available
Iowa Code § 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated September 17, 2014 reference 05, which held claimant able and available for work. After due notice, a hearing was scheduled for and held on October 15, 2014. Claimant participated personally. Employer participated by Matt Archibald with witness Courtney Kemmerer.

ISSUES:

Whether claimant is able and available for work.

Whether claimant is overpaid benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: claimant has previously been determined to be physically able and to work in 14A-UI-09774, reference 02. In that same matter, claimant was deemed not to be available for work as claimant was not willing to work the same hours she had worked prior to her maternity leave.

The same findings of fact made in case 14A-UI-09774, reference 02, are applicable in this matter as claimant has the same conditions applied to her reemployment in this case as she has in that matter.

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 pregnancy was not work related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. Claimant has not established the availability to work at the same hours and wages as she had been employed by employer prior to her maternity leave. Benefits are withheld until such time as the claimant is shown to be available for work.

As claimant is deemed to be not able and available for work, payments received in this matter shall be deemed overpayments.

DECISION:

The decision of the representative dated September 17, 2014, reference 05 is reversed. Claimant is not eligible to receive unemployment insurance benefits, effective August 31, 2014. Payments made to the claimant shall be deemed to be overpaid \$180 for the four weeks ending on September 27, 2014.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css