

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HEATHER HIMES

Claimant

APPEAL NO. 07A-UI-07279-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HENRY COUNTY MEMORIAL HOSPITAL

Employer

**OC: 06-03-07 R: 04
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the July 19, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on August 14, 2007. The claimant did participate. The employer did participate through Jim Carson, Human Resources Manager.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a paramedic specialist part time beginning April 1, 2002 through May 16, 2007 when she was placed on administrative leave due to a non-work-related medical condition.

On or about May 20, 2007 the claimant sustained a fainting spell while at a local Wal-Mart store. At the time the claimant fainted she learned she was pregnant. When her employer learned of the episode, the employer asked her to go see a neurologist to get clearance before returning to work. As part of her work duties the claimant was required on a regular basis to drive an ambulance. The claimant saw a neurologist who imposed work restrictions upon the claimant that included no driving the ambulance for at least six months, no working in the back of the ambulance and no working alone for at least six months. The restrictions will be lifted at the end of the six months, only if the claimant has not experienced any additional fainting spells.

The employer has not yet found any work for the claimant that would accommodate her non-work-related work restrictions. For public safety issues the employer will not allow the claimant to return to work as a paramedic specialist until she has all of her work restrictions lifted by her physician.

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 May 20, 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 injury or pregnancy that led to or caused the fainting spell was not work related and the treating physician has not released the claimant to return to work, without any restrictions, the claimant has not established ability to work. An employer is not required to accommodate work restrictions that arise from pregnancy or from non-work-related medical conditions. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The representative's decision dated July 19, 2007, reference 01, is affirmed. The claimant is not able to work and available for work effective May 20, 2007. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css