

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY M STRAND
Claimant

APPEAL NO. 12A-UI-14420-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA WORKFORCE DEVELOPMENT

OC: 10/28/12
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Ashley Strand filed a timely appeal from the November 30, 2012, reference 02, decision that denied benefits effective October 28, 2012 based on an agency conclusion that she was not able to available for work. After due notice was issued, a hearing was held on January 10, 2013. Ms. Strand participated. This hearing was consolidated with the hearing in Appeal Number 12A-UI-14419-JTT. Exhibit One was received into evidence.

ISSUE:

Whether Ms. Strand has met the work availability requirement since she established her claim for benefits. She has not.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Ashley Strand was employed by St. Luke's Living Center West as a *part-time* residential care tech/Certified Nursing Assistant from August 2012 until October 29, 2012, when she voluntarily separated from the employment upon the advice of her obstetrician. Ms. Strand was six months pregnant at the time. On October 29, 2012, Ms. Strand presented Carla Matt, Human Resources Director, with a note from her obstetrician. The note said that Ms. Strand needed to be "off Work until after Delivers Pregnancy. Due 2-5-13." Ms. Matt told Ms. Strand that she was welcome to reapply after her baby was born. Ms. Strand has not yet given birth, but the delivery due date remains February 5, 2013. Ms. Strand's work for the employer involved assisting elderly residents with eating, personal hygiene, transfers, and getting from one area of the nursing home facility to another.

Ms. Strand established a claim for benefits that was effective October 28, 2012. Since she established that claim, Ms. Strand has remained under the care of the physician who took her off work completely and who has not released Ms. Strand to return to work.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 and (2) provide:

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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

A claimant who is under the care of a physician who has not released the claimant to return to work does not meet the work availability requirement. See Iowa Administrative Code section 871 IAC 24.23(35). Because Ms. Strand has been under the care of a physician since she established her claim for benefits, and because the doctor took her off work and has not released her to return to work, Ms. Strand does not meet the availability requirement. Benefits are denied effective October 28, 2012. This disqualification for benefits continued as of the January 10, 2013 appeal hearing.

DECISION:

The Agency representative's November 30, 2012, reference 02, decision is affirmed. The claimant has been under the care of a physician who took her off work and who has not released her to return to work. The claimant does not meet the availability requirement. Benefits are denied effective October 28, 2012. This disqualification for benefits continued as of the January 10, 2013 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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