

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CINDIE L BROWN
Claimant

APPEAL NO. 11A-UI-13011-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KIMBALL & BEECHER PLC
Employer

OC: 08/28/11
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated September 27, 2011, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on October 27, 2011. Claimant participated personally. Employer participated by Jay Colbert, Clinic Administrator.

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 was laid off due to an injury of the doctor that she worked for. Claimant was offered recall to the same job and wages effective September 20, 2011. Claimant declined the recall so that a subordinate employee could be recalled sooner. Claimant then returned to work October 4, 2011.

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 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".

Benefits shall be allowed effective September 21, 2011 because claimant did not refuse a recall to work. Claimant offered her recall date to a subordinate employee. Employer chose to accept that offer and brought another worker back in lieu of claimant. Claimant was able and available for work. This is neither a refusal of work nor a lack of availability. Benefits allowed.

DECISION:

The decision of the representative dated September 27 2011, reference 02 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective September 21, 2011, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs