

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

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CARE INITIATIVES  
C/O TALX – JOHNSON & ASSOC  
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Appeal Number: 06A-UI-04701-DWT  
OC: 04/02/06 R: 03  
Claimant: Appellant (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Heather N. Brobst (claimant) appealed a representative's April 28, 2006 decision (reference 01) that concluded she was not eligible to receive benefits as of April 2, 2006, because of work restrictions associated with her pregnancy. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 17, 2006. The claimant participated in the hearing. Lynn Corbeil, an attorney, represented Care Initiatives (employer). Jeff Slotsky, the administrator, Julie Davis, the office manager, and Judy Johnson, the director of nursing, appeared as witnesses on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work as of April 2, 2006?

#### FINDINGS OF FACT:

The claimant started working for the employer on December 1, 2003. The claimant worked as a full-time certified nursing assistant (CNA). The employer requires CNAs and CNAs who perform restorative aide job duties to be able to lift 50 pounds. Prior to April 4, 2006, the claimant worked part of the time as a restorative aide.

On April 4, 2006, the claimant presented a work restriction from her doctor as the result of a risky pregnancy. The employer was able to accommodate all of the restrictions except the restriction that prevented the claimant from lifting over 20 pounds. The employer's policy indicates the employer cannot change the job duties or the requirements necessary to work as a CNA for one person.

After realizing the claimant's 20-pound weight restriction prevented the claimant from working at her job as a CNA, the employer talked to the claimant about going on a medical leave through the Family Medical Leave Act. The claimant completed the necessary paperwork and asked her doctor to complete the required medical forms. Based on the doctor's work restrictions, the employer placed the claimant on a medical leave of absence as of April 5, 2006. The employer recognizes that the claimant's baby is not due until October 2006. If the claimant is unable to return to work at the end of her 12-week medical leave under FMLA, the employer would allow her to continue an unpaid leave of absence.

#### REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, she must be able to and available for work. Iowa Code § 96.4-3. A leave of absence negotiated with the consent of both parties is deemed a period of voluntary unemployment and the claimant is considered ineligible to receive benefits while on a leave of absence. 871 IAC 24.22(j). The facts establish the claimant completed the necessary paperwork and asked the employer for a medical leave of absence under the Family Medical Leave Act. As of the date of the hearing, the employer still considered the claimant an employee who was on a medical leave of absence. Therefore, as of April 2, 2006, the claimant is not eligible to receive unemployment insurance benefits.

When there is a change of employment status or the employer no longer considers the claimant an employee, the claimant can reopen her claim for benefits. At that time, the Claims Section will investigate the reasons for the employment separation and the claimant must establish her eligibility to receive benefits. Since the claimant is currently an employee, the issue of whether the employer's account is liable for any benefits paid to the claimant is speculative because an employer's account can only be relieved from charge when a claimant voluntarily quits without good cause, is discharged for work-connected misconduct, or refuses an offer of suitable work without good cause. Iowa Code § 96.7-2-a.

#### DECISION:

The representative's April 28, 2006 decision (reference 01) is affirmed. The claimant is currently voluntarily unemployed because she is on a medical leave of absence under the

Family Medical Leave Act. As a result, she is not eligible to receive benefits as of April 2, 2006. The claimant shall remain ineligible until she files additional claims, is no longer on a medical leave of absence and establishes her eligibility to receive unemployment insurance benefits.

dlw/kkf