

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LUCINDA O GILLAM
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL NO. 21A-UI-16560-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/19/20
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 19, 2021 reference 09, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 20, 2021. Claimant participated personally.

ISSUES:

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 had a child in early January and remained away from work as a result of her pregnancy and childbirth. She did not attempt to secure employment from January 17, 2021 through February 20, 2021.

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".

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.

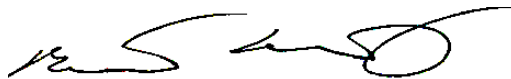
(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

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.

Inasmuch as the claimant has not shown the ability to work in some capacity at or shortly after the time of giving birth, she has not established the ability to work for the period between January 17, 2021 and February 20, 2021. Benefits shall be allowed effective February 21, 2021 if claimant is otherwise eligible.

DECISION:

The decision of the representative dated July 19, 2021, reference 09 is affirmed. Claimant is not eligible to receive unemployment insurance benefits for the period between January 17, 2021 and February 20, 2021. Claimant is able to receive unemployment benefits after February 20, 2021 provided claimant meets all other eligibility requirements.



Blair A. Bennett
Administrative Law Judge

September 22, 2021
Decision Dated and Mailed

bab/scn