

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY GOLLY
Claimant

APPEAL NO: 07A-UI-00099-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WESLEY ACRES
Employer

OC: 11/12/06 R: 02
Claimant: Appellant (1)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Stacy Golly (claimant) appealed an unemployment insurance decision dated December 20, 2006, reference 07, which held that she was not eligible for unemployment insurance benefits because she was not able and available to work for Wesley Acres (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 22, 2007. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted, and therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time certified nurse's aide on August 2006. She had minor complications with her pregnancy and her physician placed her on lifting restrictions as of November 12, 2006. The claimant delivered her baby on January 8, 2007 but is not able to return to work for another four weeks.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code section 96.4(3) and 871 IAC 24.22.

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 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.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant was placed under medical restrictions due to complications from her pregnancy. She testified she is not able to return to work at this time and will not be able to return to work for another four weeks. Consequently, benefits are denied.

DECISION:

The unemployment insurance decision dated December 20, 2006, reference 07, is affirmed. The claimant was not able to work as of November 12, 2006 and continues under medical

restrictions. Since she does not meet the availability requirements of the law, benefits are denied.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs