

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY GRAVES

Claimant

APPEAL NO. 11A-UI-07200-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALS CORNER OIL CO

Employer

OC: 04-17-11

Claimant: Respondent (2-R)

Section 96.4-3 – Able and Available

Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 27, 2011, reference 03, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 23, 2011. The claimant participated in the hearing. Bonnie Jeffries, manager, and Danee Snyder, auditor, participated in the hearing on behalf of the employer.

ISSUE:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was hired by the employer as a part-time clerk August 13, 2010, and is still employed with the employer. The claimant is pregnant and in mid to late April 2011 the claimant notified the employer she was no longer able to perform work for it. She provided the employer with a copy of her doctor's excuse taking her off work May 13, 2011, due to complications with her pregnancy. The claimant has not received a full release from her treating physician stating she could return to work for the employer without restriction. She testified her doctor stated she could work in a sitting position, but the employer did not have a position that would accommodate her restrictions.

The claimant has claimed and received benefits since her temporary separation from this employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work at this time.

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".

Pregnancy is a non-work-related condition. Consequently, the employer is not obligated to accommodate the claimant's restrictions. The claimant's physician has restricted her from working for the employer until the danger to her pregnancy has passed. While she may be able to perform work that would allow her to sit at this time, she is still attached to this employer and is not able and available for work with it until further notice. Accordingly, benefits must be denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code section 96.3-7. In this case, the claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

DECISION:

The May 27, 2011, reference 03, decision is reversed. The claimant is not able and available for work at this time. Benefits are withheld until such time as the claimant works in and has been paid wages equal to ten times her weekly benefit amount, provided she is otherwise eligible, or until such time as the claimant obtains a full release without restriction to return to regular duties, offers services to the employer, and the employer has no comparable, suitable work available. The claimant has received benefits but was not eligible for those benefits. The matter of determining the amount of the overpayment and whether the overpayment should be recovered under Iowa Code section 96.3-7-b is remanded to the Agency.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/kjw