

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YASMIN V DELAPAZ
Claimant

APPEAL NO. 15A-UI-04424-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALLSTEEL INC
Employer

OC: 03/08/15
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated April 7, 2015, reference 01, which denied unemployment insurance benefits as of March 8, 2015 finding that the claimant was not able to perform work and, therefore, did not meet the availability requirements of the law. After due notice was provided, a telephone hearing was held on May 19, 2015. Claimant participated. Although duly notified, there was no participation by the employer.

ISSUE:

The issue is whether the claimant is able and available for work within the meaning of the Iowa Employment Security Law.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Yasmin Delapaz began work for Allsteel, Inc. in February 2013. Ms. Delapaz is employed as a full-time production worker for Allsteel, Inc. and is paid by the hour. The claimant requested and was granted a medical leave of absence beginning March 2, 2015 after the claimant provided a doctor's note stating that she was unable to perform work due to pregnancy.

The claimant's request to be placed on a medical leave of absence was approved by the employer and the claimant remains on a medical leave of absence at the time of hearing.

It is the claimant's position that although she requested and was granted a medical leave of absence and her doctor verified that she is unable to work due to pregnancy, she desires to receive unemployment insurance benefits because she has no other source of income at this time. It is the claimant's intention to return to work with Allsteel, Inc. after the birth of her child and being released by her physician to return to employment.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence in the record establishes that the claimant is able and available for work as required by the provisions of the Iowa Employment Security Law. It does not.

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".

An otherwise eligible claimant is eligible to receive unemployment insurance benefits with respect to any week only if the evidence indicates that the individual is able to work, is available for work, and is earnestly and actively seeking work. Iowa Code section 96.4(3) and 871 IAC 24.22. The claimant bears the burden of establishing that the claimant meets the above requirements. 871 IAC 24.22.

To satisfy the ableness requirement, an individual must be physically and mentally able to work in gainful employment which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). With regard to illness, injury or pregnancy, each case is decided on an individual basis. A statement from the medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A physician's statement is legally sufficient to establish the claimant's physical ability unless disputed by other evidence. 871 IAC 24.22(1)(a).

Iowa Admin. Code r. 871-24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

An individual who has requested and has been granted a leave of absence is disqualified for unemployment insurance benefits as they are considered unavailable for work as the period of the leave of absence is deemed as a period of voluntary unemployment during which the claimant is considered to be ineligible for benefits.

The evidence in the record establishes that Ms. Delapaz has been determined medically unable to work effective March 8, 2015 due to pregnancy. The evidence in the record also establishes the claimant has requested and has been granted a medical leave of absence and is ineligible to receive unemployment insurance benefits during the leave of absence. Because the claimant is not able and available for work, she does not meet the eligibility and availability requirements of the law. Benefits are denied as of March 8, 2015.

DECISION:

The representative's decision dated April 7, 2015, reference 01, is affirmed. Claimant has not been medically able to perform work as of March 8, 2015 and does not meet the availability requirements of the law. Benefits are denied as of March 8, 2015.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs