

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIRSTIN D HAHN**  
Claimant

**APPEAL NO. 16A-UI-07460-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLSTEEL INC**  
Employer

**OC: 05/01/16**  
**Claimant: Respondent (4/R)**

Iowa Code Section 96.4(3) – Able & Available  
Iowa Code Section 96.4(3) – Still Employed Same Hours and Wages  
Iowa Code Section 96.7(2) – Employer Liability

**STATEMENT OF THE CASE:**

Kirstin Hahn filed a timely appeal from the July 1, 2016, reference 03, decision that denied benefits effective June 5, 2016, based on an agency conclusion that she was not partially unemployed from Allsteel, Inc. After due notice was issued, a hearing was held on July 21, 2016. Ms. Hahn participated. Steve Zaks of Employers Edge represented the employer and presented testimony through Katina McDaniel and Brenden Meeker. The hearing in this matter was consolidated with the hearing in Appeal Numbers 16A-UI-06680-JTT and 16A-UI-06681-JTT. Exhibits One through Five and Department Exhibits D-1 through D-6 were received into evidence.

**ISSUES:**

Whether the claimant has been able to work and available for work since June 5, 2016.

Whether the claimant has been partially unemployed and/or temporarily unemployed since June 5, 2016.

Whether the employer's account may be assessed for benefits paid to the claimant for the period beginning June 5, 2016.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Kirstin Hahn has been employed by Allsteel, Inc. as a full-time Work Cell Operator since July 2014. Her regular work hours are 3:00 p.m. to 11:30 p.m., Monday through Friday. Her supervisor is Production Group Leader Brenden Meeker. Since February 2016, Ms. Hahn's base wage has been \$13.77 per hour. Before then, Ms. Hahn's base wage was \$12.25 per hour. Ms. Hahn receives an additional 50 cents per hour in shift differential pay.

On April 26, 2016, Ms. Hahn provided the employer with medical restrictions that limited her to lifting and/or pulling no greater than 25 pounds. The medical restrictions also restricted

Ms. Hahn from bending. Up that point, Ms. Hahn's job description and work duties required that she be able to lift up to 40 pounds. The medical restrictions were based on Ms. Hahn's pregnancy. At the time, Ms. Hahn's doctor imposed the medical restrictions, Ms. Hahn was six months into her pregnancy. Ms. Hahn is currently eight months into her pregnancy. The expected delivery date for Ms. Hahn's baby is August 31, 2016.

In response to Ms. Hahn's medical restrictions, the employer moved Ms. Hahn to a production area that provided work that would not require Ms. Hahn to lift greater than 20 pounds. Ms. Hahn began the new assignment at the beginning of May 2016. In the new work area, it is common for the employees to complete the day's production prior to the scheduled end of the shift. In those instances, the employer sends the employee home early. Production in Ms. Hahn's newly assigned work area has further slowed.

Ms. Hahn established an original claim for unemployment insurance benefits that was effective May 1, 2016. Workforce Development set Ms. Hahn's weekly benefit amount at \$488.00. Allsteel is the sole base period employer. Ms. Hahn's base period consists of the four quarters of 2015. Ms. Hahn's wages for that period and for the first quarter of 2016 were as follows:

<u>Quarter</u>	<u>Quarterly Wages</u>	<u>Average Weekly Wages</u>
2015/1	\$6,937.62	\$533.66
2015/2	\$6,658.31	\$512.18
2015/3	\$6,880.60	\$529.28
2015/4	\$10,239.62	\$787.66
2016/1	\$6,081.69	\$467.82

Ms. Hahn established an additional claim for benefits that was effective June 5, 2016. Because an earlier decision addressed the period of May 1, 2016 through June 4, 2016, the present decision focuses on the period beginning June 5, 2016.

For the week ending June 11, 2016, the employer had 25.2 hours of work that met Ms. Hahn's medical restrictions. Ms. Hahn made herself available for 23.2 hours of that work and requested two hours off as paid vacation. Ms. Hahn's gross wages for the week were \$348.52.

For the week ending June 18, 2016, the employer had 38 hours of work that met Ms. Hahn's medical restrictions. Ms. Hahn made herself available 36 for that work and requested two hours off as paid vacation. Ms. Hahn's gross wages for the week were \$526.06.

For the week ending June 25, 2016, the employer had 37.6 hours of work that met Ms. Hahn's medical restrictions. Ms. Hahn made herself available for 29.6 hours of that work and request eight hours off as paid vacation. Ms. Hahn's gross wages for the week were \$517.51.

For the week ending July 2, 2016, the employer had 23.9 hours of work that met Ms. Hahn's medical restrictions. Ms. Hahn made herself available for that work. The employer did not have work available in Ms. Hahn's work area on June 30 or July1. The employer offered the employees work in another area of the plant on those days, but the work was not within Ms. Hahn's medical restrictions. Ms. Hahn's gross wages for the week were \$331.49.

For the week ending July 9, 2016, the employer did not have any work available in Ms. Hahn's work area. The employer offered the employees work in another area of the plant on those days, but the work was not within Ms. Hahn's medical restrictions. Ms. Hahn had zero wages for the week.

For the week ending July 16, 2016, the employer had 36 hours of work that met Ms. Hahn's medical restrictions. Ms. Hahn performed 28 hours of that work and used eight hours as paid funeral leave in connection with the passing of Ms. Hahn's father. Ms. Hahn's gross wages for the week were \$495.32.

**REASONING AND CONCLUSIONS OF LAW:**

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".

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.

Iowa Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that

sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Ms. Hahn's pregnancy-related 25-pound weight restriction did not prevent her from meeting the requirements that she be able to work and available for work. The employer had an obligation to provide Ms. Hahn with reasonable accommodations that would allow her to continue in the work. See Sierra v. Employment Appeal Board, 508 N.W. 2d 719 (Iowa 1993).

So long as Ms. Hahn was available for work with Allsteel for the majority of the work week, she would meet the availability requirement. On the other hand, if she was not available work for the majority of the work week, she would not meet the availability requirement. See 871 IAC 24.23(29).

An individual shall be deemed *partially unemployed* in any week in which, while employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars. Iowa Code Section 96.19(38)(b).

An individual shall be deemed *temporarily unemployed* if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed *due to a plant shutdown, vacation, inventory, lack of work or emergency* from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated. Iowa Code Section 96.19(38)(c).

Iowa Code section 96.7(1) and (2) provides, in relevant part, as follows:

Employer contributions and reimbursements.

1. Payment. Contributions accrue and are payable, in accordance with rules adopted by the department, on all taxable wages paid by an employer for insured work.

2. Contribution rates based on benefit experience.

a. (1) The department shall maintain a separate account for each employer and shall credit each employer's account with all contributions which the employer has paid or which have been paid on the employer's behalf.

(2) The amount of regular benefits plus fifty percent of the amount of extended benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred.

(a) However, if the individual to whom the benefits are paid is in the employ of a base period employer at the time the individual is receiving the benefits, and the individual is receiving the same employment from the employer that the individual received during the individual's base period, benefits paid to the individual shall not be charged against the account of the employer. This provision applies to both contributory and reimbursable employers, notwithstanding subparagraph (3) and section 96.8, subsection 5.

[Emphasis added.]

The weight of the evidence establishes that Ms. Hahn was able to work, available for work, and partially unemployed during the week that ended June 11, 2016. The employer only had

25.2 hours of work that met her medical restrictions. Ms. Hahn made herself available for all but two hours of the work. Ms. Hahn's \$348.52 in gross wages for the week represented a substantial reduction from the base period wages and was substantially less than Ms. Hahn's unemployment insurance weekly benefit amount. Ms. Hahn is eligible for benefits for the week that ended June 11, 2016, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for that week.

Because Workforce Development set Ms. Hahn's weekly benefit amount at \$488.00, Ms. Hahn cannot not be considered partially unemployed during any week in which her gross weekly wages exceed \$503.00. Accordingly, Ms. Hahn cannot be deemed to have been partially unemployed during the weeks that ended June 18 and 25, 2016 and is not eligible for benefits for those weeks. The administrative law judge need not further consider Ms. Hahn's eligibility for those two weeks.

The weight of the evidence establishes that Ms. Hahn was able to work, available for work, and partially unemployed during the week that ended July 2, 2016. The weight of the evidence establishes that the employer only had 23.9 hours of work that met her medical restrictions. Ms. Hahn made herself available for all of that work. Ms. Hahn's \$331.49 in gross wages for the week represented a substantial reduction from the base period wages and was substantially less than Ms. Hahn's unemployment insurance weekly benefit amount. Ms. Hahn is eligible for benefits for the week that ended July 2, 2016, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for that week.

The weight of the evidence in the record establishes that Ms. Hahn was able to work, available for work, but temporarily laid off during the week that ended July 9, 2016. The weight of the evidence indicated that Ms. Hahn would have made herself available for work that met her medical restrictions, but that the employer did not have any such work for her during that week. Ms. Hahn is eligible for benefits for the week that ended July 9, 2016, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for that week.

The weight of the evidence establishes that the employer essentially had full-time work available for Ms. Hahn during the week that ended July 16, 2016. The employer had 36 hours of work available that week. Because the work the employer had was essentially full-time and because the \$495.32 in wages and hours were comparable to the base period wages and hours, Ms. Hahn cannot be deemed "available," cannot be deemed partially unemployed, and is not eligible for benefits for that week. See Iowa Code section 96.4(3), 871 IAC 24.22(2)(f), 971 24.23(149), and Iowa Code Section 96.19(38)(b).

Given Ms. Hahn's stage in her pregnancy and given her reference to an employer announcement of an impending work slowdown, this matter will be remanded to the Benefits Bureau for determination of whether Ms. Hahn has been able to work, available for work, partially unemployed and/or laid off for the period beginning July 17, 2016. The present decision addresses those issues only for the period of June 5, 2016 through July 16, 2016.

**DECISION:**

The July 1, 2016, reference 03, decision is modified as follows.

The claimant was able to work, available for work, and partially unemployed during the week that ended June 11, 2016. The claimant is eligible for benefits for the week, provided she meets

all other eligibility requirements. The employer's account may be charged for benefits for that week.

The claimant was not partially unemployed during the weeks that ended June 18 and 25, 2016 and is not eligible for benefits for those weeks.

The claimant was able to work, available for work, and partially unemployed during the week that ended July 2, 2016. The claimant is eligible for benefits for that week, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for that week.

The claimant was able to work, available for work, and temporarily laid off during the week that ended July 9, 2016. The claimant is eligible for benefits for that week, provided she meets all other eligibility requirements. The employer's account may be charged for benefits for that week.

For the week that ended July 16, 2016, the claimant was working to an extent that she did not meet the availability requirement and was not partially unemployed. The claimant is not eligible for benefits for that week.

This matter is remanded to the Benefits Bureau for determination of whether the claimant has been able to work, available for work, partially unemployed and/or laid off for the period beginning July 17, 2016. The present decision addresses those issues only for the period of June 5, 2016 through July 16, 2016.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs