

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SASHA A RUNYON
Claimant

APPEAL NO: 06A-UI-10099-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CASEY'S MARKETING COMPANY
Employer

OC: 09/03/06 R: 01
Claimant: Appellant (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Sasha A. Runyon (claimant) appealed a representative's October 9, 2006 decision (reference 04) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Casey's Marketing Company (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 31, 2006. The claimant participated in the hearing. Toni Richardson appeared on the employer's behalf. This appeal was consolidated for hearing with one related appeal, 06A-UI-10100-DT. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on August 20, 2005. She worked part time (30 to 35 hours per week) as a clerk and cook in the employer's Shenandoah, Iowa convenience store. Prior to the hearing, her most recent day of work was August 12, 2006.

The claimant called in an absence due to illness on August 13. She was hospitalized beginning August 15 for several days due to a high risk pregnancy (due date March 20, 2006) and subsequently provided a doctor's note excusing her from work from August 15 through August 21. Her doctor did not initially want her to return to work at all, but did indicate she could return to work after August 21 if she could work in someplace other than a hot environment. She was also to sit occasionally, avoid solvents, and work no more than four hours. Additional restrictions subsequently imposed were no frequent bending, stooping, or lifting, no lifting more than ten pounds, and no prolonged standing.

The employer indicated that it could not provide the claimant work meeting those restrictions given the claimant's duties both in the hot kitchen area and in carrying out her clerk duties which

required standing, bending, stooping, and lifting. As a result, the claimant could not return to work until she presented a doctor's excuse on October 25 allowing her to work without any of the prior restrictions. She returned to work on October 30. The claimant had established an unemployment insurance benefit year effective September 3, 2006 when the employer did not allow her to return to work with her restrictions.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant was eligible for unemployment insurance benefits by being able and available for employment.

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".

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.

While the claimant's restrictions may not have precluded her from being able to perform all work, while she was under the restrictions against working in hot conditions and the bending, stooping, lifting, and standing restrictions, she did not meet the same criteria as being able to perform work as other persons in her position. While employers must make some accommodations to persons with permanent disabilities who are otherwise able to perform the essential functions of a job and can be responsible for a claimant's unemployment insurance benefits if they fail to make accommodations for other medical or health conditions that are caused or attributable to the employer, an employer is not required to alter the requirements of a job to accommodate a temporary non-employment related condition such as pregnancy. 871 IAC 24.26(6)b.

Unemployment insurance benefits are not intended to substitute for health or disability benefits during a period of unemployment, even if the claimant is without fault as to the reason for being off work. White v. Employment Appeal Board, 487 N.W.2d 342 (Iowa 1992). The claimant was not able and available to the same extent as other individuals for her position, and therefore was not eligible for unemployment insurance benefits during that period.

DECISION:

The representative's October 9, 2006 decision (reference 04) is affirmed. The claimant was not able to work and available for work effective September 3 until October 25, 2006. The claimant was not qualified to receive unemployment insurance benefits for that period.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs