

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANNA M MORGAN

Claimant

APPEAL NO. 08A-UI-02006-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRASER TRANSPORTATION SERVICES

Employer

**OC: 01/20/08 R: 02
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Anna Morgan (claimant) appealed a representative's February 21, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits because she was not able and available for work with Fraser Transportation Services (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for March 11, 2008. The claimant participated personally. The employer participated by John Fraser, Owner, and Brian Hoffman, Director of Operations. The claimant offered and Exhibit A was received into evidence.

ISSUE:

The issue is whether the claimant was able and available for 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 on January 13, 2005, as a emergency medical technician working on an as needed basis. On or about February 2006, the claimant became a full-time employee. The claimant notified the employer of her pregnancy in early January 2008. She expressed her concerns about working on the streets, lifting and caring for people while pregnant. The employer understood those concerns.

On January 9, 2008, the claimant's physician limited the claimant's lifting, pulling and pushing until six weeks after the delivery of the baby. The baby is due on May 13, 2008. The claimant provided the note to the employer and said she did not want to work full-time in an ambulance while pregnant. The employer offered the claimant work in dispatch but the claimant refused the offer because she was afraid she would lose her regular work after the baby was born. The employer telephoned the claimant on five different occasions at the number she provided to offer long distance ambulance driving. The claimant did not answer and the employer left a message. The claimant did not receive the messages. The employer found work for the claimant in the business office doing filing. She worked less than ten hours per week.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is not able and available for work.

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.

871 IAC 24.22(2)m 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.

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

When an employee imposes so many physical and location of work restrictions that the employer can not comply, she is considered to be unavailable for work. The claimant has physical restrictions imposed by her physician for a condition that is not work related. In addition she imposed so many requirements on her light duty that the employer could not grant her request and accommodate everything she wanted. She is considered to be unavailable for work from January 9, 2008. The claimant is disqualified from receiving unemployment insurance benefits from January 9, 2008, due to her unavailability for work.

DECISION:

The representative's February 21, 2008 decision (reference 01) is affirmed. The claimant is considered to be unavailable for work from January 9, 2008. The claimant is disqualified from receiving unemployment insurance benefits from January 9, 2008, due to her unavailability for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs