

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CASSIE VAN DUSEN
Claimant

APPEAL NO. 07A-UI-09086-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOOD SHEPHERD GERIATRIC CNTR INC
Employer

OC: 08/26/07 R: 02
Claimant: Appellant (1)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Cassie Van Dusen (claimant) appealed an unemployment insurance decision dated September 21, 2007, reference 01, which held that she was not eligible for unemployment insurance benefits because she is not able and available to work for Good Shepherd Geriatric Center, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 9, 2007. The claimant participated in the hearing. The employer participated through Mike Sveada, Administrator. Claimant's Exhibit A was admitted 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:

The issue is whether the claimant is able and available to work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired on June 14, 2006 as a full-time certified nurse's aide. She continued working through August 23, 2007, when her treating physician placed her on a work restriction for a non-work-related medical condition. The claimant was pregnant and had a 30-pound lifting restriction. Her job duties require that she be able to lift 50 pounds, so she was unable to work after being placed on the lifting restriction. The claimant had her baby on October 3, 2007 and has not been released to return to work.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). As of August 23, 2007, the claimant had a non-work-related lifting restriction of 30 pounds due to her pregnancy. Her job duties require her to be able to lift 50 pounds, so she was unable to work in her usual capacity for this employer. The claimant had her baby on October 3, 2007 and has not yet been released to return to work. The claimant does not meet the availability requirements of the law. Benefits are denied as of as of August 26, 2007.

DECISION:

The unemployment insurance decision dated September 21, 2007, reference 01, is affirmed. The claimant is not able and available for work and does not qualify for unemployment insurance benefits.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw