

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHEILA K KELLER

Claimant

APPEAL . 07A-UI-04583-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARLEY'S & SATHERS CANDY CO INC

Employer

**OC: 04/01/07 R: 03
Claimant: Respondent (1)**

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 27, 2007, reference 01, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on May 22, 2007. Claimant participated. Employer participated through Robin Beech Travis.

ISSUE:

The issue is whether claimant is able to and available for work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed as a full time packaging machine operator. Overtime hours are required as a part of the job duties and functions. Claimant presented a treating physician's note that she was unable to work more than 40 hours per week on a temporary basis because of stress, lower back pain and fatigue related to the excessive work hours over an extended period of time. Employer placed her on a short-term medical leave of absence from April 2 through April 11, 2007 and she returned to work without restriction on April 12, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work

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(1) and (35) provide:

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

(1) An individual who is ill and presently not able to perform work due to illness.

(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.

Inasmuch as the injury was work-related and the treating physician's restrictions were that she not work overtime hours, even with those restrictions the claimant has established her ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated April 27, 2007, reference 01, is affirmed. The claimant is able to work and available for work effective April 1, 2007. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css