

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**PHILLIP J FRASER
612 – 1ST ST SE
BELMOND IA 50421-1402**

**ELECTROLUX HOME PRODUCTS INC
c/o TALX EMPLOYER SERVICES
PO BOX 1160
COLUMBUS OH 43216-1160**

**Appeal Number: 05A-UI-05947-CT
OC: 05/01/05 R: 01
Claimant: Appellant (2)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Phillip Fraser filed an appeal from a representative's decision dated May 31, 2005, reference 01, which denied benefits on a finding that he was unable to work due to an injury. After due notice was issued, a hearing was held by telephone on June 21, 2005. Mr. Fraser participated personally and Exhibit A was admitted on his behalf. The employer participated by Lavonne Russell, Benefits Administrator.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Fraser began working for Electrolux Home Products

(Electrolux) on May 6, 1991 and last performed services on November 3, 2004. At that point, he was working full time in the plastics department. In July of 2004, Mr. Fraser notified the employer that he had sustained a work-related shoulder injury. He continued to work until November when his doctor took him off work. The employer concluded that the injury was not work-related and, therefore, workers' compensation coverage was denied. Mr. Fraser's doctor is of the opinion that his medical condition is due to his work with Electrolux.

Mr. Fraser received disability benefits through the employer from November of 2004 until May of 2005. He indicated to the employer his desire to return to work. However, because of his medical restrictions, he has not been allowed to return. He cannot perform work above shoulder level and should avoid repetitive shoulder motions. He can lift up to 20 pounds on rare occasions and up to 5 pounds on a routine basis. Mr. Fraser's doctor has indicated that he can work within the above restrictions.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Fraser is able to work as required by Iowa Code section 96.4(3) as a condition of receiving job insurance benefits. The law does not require that he be able to perform his usual job. The law only requires that he be physically and mentally able to engage in some work activity that is engaged in by others as a means of livelihood. See 871 IAC 24.22(1). Although Mr. Fraser has restrictions, they are not such that he is precluded from all work activity. He could perform work as a cashier or salesperson. He could perform clerical work or work as a telemarketer. The administrative law judge believes there are sufficient jobs in the labor market that would fit within Mr. Fraser's physical limitations.

The administrative law judge concludes that Mr. Fraser retains the residual functional capacity to perform work that is engaged in by others in the labor force. As such, he is able to work within the meaning of the law, his work-related injury notwithstanding.

DECISION:

The representative's decision dated May 31, 2005, reference 01, is hereby reversed. Mr. Fraser is able to work within the meaning of the law. Benefits are allowed, provided he satisfies all other conditions of eligibility.

cfc/pjs