

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICK A LUDWIG
Claimant

APPEAL NO: 11A-UI-14717-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 10/09/11
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Nick Ludwig (claimant) appealed a representative's November 4, 2011 decision (reference 04) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to work. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was scheduled for December 6, 2011. The claimant participated personally.

ISSUE:

The issue is whether the claimant is able and available for 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 March 1, 2011, as a full-time mill operator. He worked from 10:00 p.m. to 8:30 a.m. each day. The claimant signed for receipt of the employer's handbook. The claimant suffered a work-related injury in August 2011 and was working with restrictions from his physician until his separation.

The claimant developed a viral infection and was contagious. He reported his absence due to this illness on October 3, 4, and 5, 2011. On October 5, 2011, at 5:00 p.m., the claimant was called to fight a fire because he is a volunteer fireman. He agreed to drive and stay in the fire truck with no passengers because he was contagious but feeling well enough to drive. On October 7, 2011, the employer terminated the claimant for partaking in a community activity while he was sick.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is able and available for work.

871 IAC 24.23(1) provides:

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.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was released to return to work without restrictions by his physician. He is considered to be available for work, because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits.

DECISION:

The representative's November 4, 2011 decision (reference 04) is reversed. The claimant is not disqualified from receiving unemployment insurance, benefits because he is available for work.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw