

**BEFORE THE  
EMPLOYMENT APPEAL BOARD  
Lucas State Office Building  
Fourth floor  
Des Moines, Iowa 50319**

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**RICHARD T CAPEHART**

Claimant,

and

**MCF OPERATING LLC**

Employer.

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**HEARING NUMBER: 14B-UI-03318**

**EMPLOYMENT APPEAL BOARD  
DECISION**

**NOTICE**

**THIS DECISION BECOMES FINAL** unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

**SECTION: 96.4-3, 96.19-38-B**

**DECISION**

The Claimant appealed this case to the Employment Appeal Board. All members of the Employment Appeal Board reviewed the entire record. A majority of the Appeal Board, one member concurring, finds the administrative law judge's decision is correct. With the following modification, the administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED** with the following **MODIFICATION**:

The Employment Appeal Board would modify the administrative law judge's Reasoning and Conclusions of Law by adding the following:

Iowa Code section 96.4(3) (2009) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds:

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 requirement 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 the benefits under section 96.5, subsection 1, paragraph "h". (Emphasis added.)

Thus, the Claimant need not be able and available for work during the time period he is partially unemployed. This matter is REMANDED, however, for consideration and a determination of whether the Claimant is able and available *after* April 26, 2014 in light of the Employer's new and additional evidence (Independent Medical Examination), which we find both material and relevant to the issue at hand.

The Board would also remand this matter for the administrative law judge to consider the effect of the Claimant's workers' compensation status on his receipt of unemployment compensation benefits.

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Kim D. Schmett

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Cloyd (Robby) Robinson

**CONCURRING OPINION OF ASHLEY R. KOOPMANS:**

I agree with my fellow board members that the administrative law judge's decision should be affirmed with modification; however, I would *abstain* from the second remand directive regarding the effect of the Claimant's workers' compensation on his benefits.

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Ashley R. Koopmans

AMG/fnv