

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**GREGORY J NOEL**  
Claimant

**CENTRO INC**  
Employer

**APPEAL NO. 14A-UI-04710-GT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/06/14**  
**Claimant: Appellant (2)**

Iowa Code § 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated April 28, 2014, reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on June 13, 2014. Claimant participated personally with assistance of Attorney John G Daufeldt. Employer participated by Tracy Lennon, Human Resources Generalist. Exhibits A-I were admitted into evidence.

**ISSUE:**

The issue in this matter is whether claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was having difficulty performing tasks at work because one of his hands was causing him pain and discomfort. He had a minor surgical procedure done to correct the issue. Claimant was able to work up until the time he had the surgery done, and then again immediately after the surgery. He was released back to work with some lifting restrictions by his doctor after the surgery.

**REASONING AND CONCLUSIONS OF LAW:**

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(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 medical practitioner and has not been released as being able to work.

Inasmuch as the injury was work related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. Benefits shall be allowed effective April 6, 2014.

**DECISION:**

The decision of the representative dated April 28, 2014, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, effective April 6, 2014, provided claimant meets all other eligibility requirements.

---

Duane L. Golden  
Administrative Law Judge

---

Decision Dated and Mailed

dlg/css