

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

SHARON M KLINE
2805 E 38TH ST
DES MOINES IA 50317

COMP TEAM INC – COMP USA INC
% TALX UC EXPRESS
PO BOX 66730
ST LOUIS MO 63166-6730

Appeal Number: 04A-UI-07340-CT
OC: 08/03/03 R: 02
Claimant: Appellant (4-R)

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:

Sharon Kline filed an appeal from a representative's decision dated June 23, 2004, reference 09, which denied benefits effective May 23, 2004 on a finding that she was not available for work. After due notice was issued, a hearing was held by telephone on August 26, 2004. Ms. Kline participated personally and offered additional testimony from Alan Kline. Exhibit A was admitted on Ms. Kline's behalf. The employer did not respond to the notice of hearing.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Ms. Kline began working for Comp Team, Inc. on November 9, 2003 as a full-time cashier. She injured her lower back when she was involved in an auto accident away from work on January 26, 2004. On May 3, Ms. Kline was released to return to work effective May 4, with restrictions. She was to lift no more than ten pounds. Her doctor wanted her to only work four hours per day her first week and then add one hour per day each week until she was back to working a full eight-hour day. The employer provided Ms. Kline with only four hours of work each day from when she returned until the employment ended on July 1, 2004. Ms. Kline filed an additional claim for job insurance benefits effective May 23, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Kline satisfied the availability requirements of Iowa Code Section 96.4(3) when she filed her additional claim effective May 23, 2004. She had been working eight hours each day before her auto accident on January 26, 2004. She was not able to work an eight-hour day until May 30, 2004. Inasmuch as she was not able to work her usual hours until May 30, she is not entitled to benefits until that time. Because the injury was not work-related, the employer was under no obligation to provide work until such time as she was fully able to perform her job. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). Therefore, the employer's failure to provide Ms. Kline with more than four hours of work would not result in her being eligible for job insurance benefits prior to when she was able to work full time.

As of the date of the hearing, Ms. Kline had been totally separated from her employment. Because the separation has not been adjudicated, this matter shall be remanded to Claims for a determination regarding the separation.

DECISION:

The representative's decision dated June 23, 2004, reference 09, is hereby modified. Ms. Kline is denied benefits from May 23 through May 29, 2004 as she was not available for work. Benefits are allowed effective May 30, 2004, provided she satisfies all other conditions of eligibility. This matter is remanded to Claims for a determination regarding Ms. Kline's separation from Comp Team, Inc.

cfc/kjf