

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TODD J FRANKE

Claimant

APPEAL NO. 12A-UI-05037-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HENKEL CONSTRUCTION CO

Employer

OC: 04/01/12

Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Todd Franke, filed an appeal from a decision dated April 26, 2012, reference 01. The decision disqualified him from receiving unemployment benefits. After due notice was issued, a hearing was held by telephone conference call on May 22, 2012. The claimant participated on his own behalf. The employer, Henkel Construction, participated by Payroll Supervisor Kayla Dontje and Business Development Representative Katrina Moore.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Todd Franke was employed by Henkel Construction beginning May 26, 2011 as a full-time carpenter/laborer. He suffered a “mini stroke” in March 2012 and his doctor released him to return to work March 12, 2012. Shortly thereafter one of the supervisors noted Mr. Franke was very unsteady, wobbling and having trouble with stumbling. The supervisor discussed it with him and suggested he go back to his doctor.

The claimant did so and was placed on physical therapy and told he would not be able to work until he had a formal evaluation of his capacities. He filed a claim for unemployment benefits with an effective date of April 1, 2012. He notified the employer of this and was finally released effective May 7, 2012, when he passed the functional capacity test. He returned to work without restrictions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 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 requirements 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 benefits under section 96.5, subsection 1, paragraph "h".

The claimant filed for unemployment when he was off work under doctor's orders for treatment of a non-work-related condition. He was only able to return to work when the doctor released him after sufficient testing. Mr. Todd maintained he could have returned to work and "pushed a broom" but the employer did not want him to return to work until he was fully recovered. A "recovery" under Section 96.5-1-d means a complete recovery without restriction. *Hedges v. IDJS*, 368 N.W.2d (Iowa App. 1985).

DECISION:

The representative's decision of April 26, 2012, reference 01, is affirmed. The claimant is not eligible for benefits for the period April 1 through May 5, 2012, as he was not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css