

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD D CRENSHAW
Claimant

APPEAL NO. 07A-UI-09682-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**KAISER CONTRACT CLEANING
SPECIALISTS INC**
Employer

**OC: 09/09/07 R: 03
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated October 12, 2007, reference 05, which held the claimant not eligible for unemployment insurance benefits. After due notice was issued, a hearing was scheduled for and held by telephone on October 31, 2007. Mr. Crenshaw participated personally. Participating on his behalf was his attorney, Ms. Terra Wood. The employer participated by Jerry Wirth. Exhibits One through Six were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge having heard the testimony and having considered the evidence in the record, finds: The claimant was employed by Kaiser Contract Cleaning as a laborer until September 12, 2007, when he was discharged from employment. The claimant had been previously injured at work and had been unable to provide a full doctor's release and return to work and, therefore, had been discharged by the employer. After receiving medical care for the injury the claimant was determined to be able to return to light-duty assignments. When the employer had no assignments of that nature available for the claimant and subsequently discharged him from employment, the claimant began seeking employment with other perspective employers each week that he claimed benefits. Mr. Crenshaw sought work of the type that he was able to perform with the light-duty limitation that had been imposed by his physician. At the time of hearing the claimant had sought and secured reemployment.

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".

871 IAC 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.

For the reasons stated herein the administrative law judge finds that the claimant is able and available for work and eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of Iowa law.

The question before the administrative law judge here is whether the claimant is able and available for work. He is. The claimant had been medically verified as able to perform light work and has sought and accepted work of that nature.

DECISION:

The representative's decision dated October 12, 2007, reference 05, is hereby reversed. Claimant is able and available for work and eligible to receive unemployment insurance benefits, providing that he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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