

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KIMBERLY THACKER-CRAIG**  
Claimant

**APPEAL NO. 08A-UI-10138-E**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**REMEDY INTELLIGENT STAFFING INC**  
Employer

**OC: 07-06-08 R: 02**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 31, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held in Des Moines, Iowa, before Administrative Law Judge Julie Elder on November 18, 2008. The claimant participated in the hearing. Wendy Mesenbrink, Customer Service Supervisor and Clint Martin, Franchisee, participated in the hearing on behalf of the employer.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant suffered a neck/back injury in November 2007 and underwent a bone fusion April 23, 2008. She has not been released to return to any type of work to date but does have an appointment with her physician December 9, 2008.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work

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 is under a doctor's care and has not been released to perform any type of work to date. Accordingly, benefits must be denied.

**DECISION:**

The October 31, 2008, reference 02, decision is affirmed. The claimant is not able to work and available for work effective November 12, 2007. Benefits are denied.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/css