

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L ROTE
Claimant

APPEAL NO. 08A-UI-07006-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF DES MOINES
Employer

OC: 06/15/08 R: 2
Claimant: Respondent (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer, City of Des Moines, filed an appeal from a decision dated July 22, 2008, reference 01. The decision allowed benefits to the claimant, Michael Rote. After due notice was issued a hearing was held by telephone conference call on August 18, 2008. The claimant participated on his own behalf and was represented by Jerry Jackson. The employer participated by Human Resources Manager Michael Carter.

ISSUE:

The issue is whether the claimant is able and available for work and whether he is receiving workers compensation benefits.

FINDINGS OF FACT:

Michael Rote was employed by City of Des Moines from June 14, 2005 until November 17, 2007 as a full-time seasonal laborer on the road crew. He was laid off at the end of the season in 2007 and was not able to return to work for the 2008 season due to a work-related injury.

He was released with permanent partial disability June 2, 2008, with a lifting restriction of a maximum of 30 pounds occasionally "horizontally," and a maximum of ten pounds overhead occasionally. He has some education post-high school and various work experience. Most of his work experience involved physical labor which he is currently unable to do with his restrictions. However, there is some work he is capable of doing such as security work and light delivery.

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 has established he is able to do some work within the labor market generally, although the scope is severely limited on the basis of his past work experience. Still, he has established there is work within his restrictions and he is therefore considered able and available for work.

DECISION:

The representative's decision of July 22, 2008, reference 01, is affirmed. Michael Rote is eligible for benefits as he is able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/css