

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN M KULHAVY**  
Claimant

**APPEAL NO. 07A-UI-06661-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**M & K DUST CONTROL**  
Employer

**OC: 01/07/07 R: 03**  
**Claimant: Appellant (1)**

Section 96.4-3 - Able to and Available for Work

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated June 29, 2007, reference 05, that concluded he was unavailable for work during the period from May 27 to June 9, 2007. A telephone hearing was held on July 23, 2007. The parties were properly notified about the hearing. The claimant participated in the hearing. Michele Grudzinski participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 7, 2007. His weekly benefit amount was \$347.00.

During the week of May 27 to June 2, 2007, the employer had eight hours of work per day for the claimant on May 29, May 30, May 31, and June 1. The claimant had surgery on May 29 and was off work voluntarily for the rest of the week. May 28 was a holiday.

During the week of June 3 to June 9, 2007, the employer had eight hours of work per day for the claimant on June 4, 5, 6, and 8. The employer did not have work for the claimant on June 7. The claimant was absent from work without notice on June 4 and 5. He reported to work on June 6. He had requested June 8 off for appointments.

In both weeks, if the claimant had worked the hours the employer had available for him to work, he would have received income in excess of his earning limit.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section

96.4-3. If a claimant is unable to work or is otherwise unavailable for work the majority of a scheduled workweek, he is considered unavailable for work and ineligible for benefits.

During the week ending June 2 and June 9, the employer had four days of work available for the claimant. He was not able to work or unavailable to work those days. Consequently, he is ineligible for benefits for both weeks.

**DECISION:**

The unemployment insurance decision dated June 29, 2007, reference 05, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits during the period from May 27 to June 9, 2007.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs