

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRACY E CARPENTER
Claimant

APPEAL NO. 11A-UI-14910-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARILLA AMERICA INC
Employer

OC: 10/02/11
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 9, 2011, reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on January 5, 2012. Claimant participated personally and was represented by David Lawyer, Attorney at Law. Employer participated by Stacey Cale, Human Resource Manager.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant went off work due to a work-related injury October 3, 2011. Claimant had a full-duty release by a treating doctor that let claimant go back to work September 23, 2011. Claimant went back full duty but could not handle the job. Claimant sought independent medical advice from another doctor and was given a five-pound lifting restriction on the left upper extremity. Claimant has not worked since October 2, 2011. Claimant has not sought work since that date because he felt that company policy prevented him from seeking other employment while on leave. Claimant did not ask employer for permission to seek other employment. At hearing employer granted claimant permission to search for other work without jeopardizing his current position. Claimant is actively searching for work effective January 5, 2011. Claimant is able to perform work in occupations for which he has prior training and experience notwithstanding his five-pound lifting restriction on one upper extremity.

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".

Inasmuch as the injury was work related and the treating physician has released the claimant to return to work, the claimant has established the ability to work. Claimant has not searched for work to date of hearing which results in a holding that claimant was not available for work to date of hearing. Claimant is now actively searching for work. Benefits shall be allowed effective January 8, 2012.

DECISION:

The decision of the representative dated November 9, 2011, reference 01, is reversed. Claimant is eligible to receive unemployment insurance benefits, effective January 8, 2012, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/css