

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

LAWRENCE E LAVENZ  
411 VINTON ST  
WATERLOO IA 50703

US POSTAL SERVICE  
STATE COORDINATOR  
PO BOX 189994  
DES MOINES IA 50318

Appeal Number: 05A-UCFE-00005-DT  
OC: 01/02/05 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

United States Postal Service (employer) appealed a representative's February 14, 2005 decision (reference 01) that concluded Lawrence E. Lavenz (claimant) was qualified to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 9, 2005. The claimant participated in the hearing. Greg Barnes appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on June 8, 1985. He works full time as a flat sorting clerk on the night shift in the employer's Waterloo, Iowa post office. The claimant was absent due to illness for several days beginning September 27, 2004; as a result, the employer placed him on a leave of absence. After three days, the claimant sought to return to work, but the employer requested him to provide a doctor's statement. He provided a statement from a social worker, but since the nature of the illness was physical, the employer declined to accept the statement from the social worker. On November 24, 2004, the claimant provided a statement from his doctor indicating that he was able to return to work as of November 25, 2004. (Exhibit A-1.) However, the employer still did not permit the claimant to return to work.

Since the claimant had been off for more than 20 days by November 24, 2004, the employer determined that it wanted a full "fitness for duty" exam to be conducted by the employer's own retained doctor. This was conducted on January 28, 2005, and the employer's doctor approved the claimant to return to work. The claimant resumed his position on February 6, 2005. The claimant had established an unemployment insurance benefit year effective January 2, 2005.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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.

The claimant presented prima facie evidence that at least as of November 25, 2004, he was medically able and available for work. The employer has not provided any medical evidence to the contrary. The fact that the employer determined that it wished for its own purposes to require a fuller examination before returning him to work does not negate the fact that the claimant was medically able and available for work as least as of November 25, 2004. Beginning on or about November 25, 2004, the employer was not providing the claimant with substantially the same employment as it had previously provided, even though the claimant was able and available to return to work. Consequently, the claimant is qualified to receive unemployment insurance benefits upon the filing of his claim effective January 2, 2005 until he was returned to work, provided he was otherwise eligible.

**DECISION:**

The representative's February 14, 2005 decision (reference 01) is affirmed. The claimant was able to work and available for work effective November 25, 2004. The claimant is qualified to receive unemployment insurance benefits as of January 2, 2005, if he is otherwise eligible.

ld/kjf