

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN C CURNES

Claimant

APPEAL NO. 07A-UI-00192-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

J L CHITTY GARBAGE SERVICE INC

Employer

**OC: 11/05/06 R: 02
Claimant: Appellant (1)**

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

John Curnes filed an appeal from a representative's decision dated December 26, 2006, reference 01, which denied benefits on a finding that he was not available for work. After due notice was issued, a hearing was held by telephone on January 23, 2007. Mr. Curnes participated personally and Exhibit A was admitted on his behalf. The employer participated by Mike Chitty, Owner.

ISSUE:

At issue in this matter is whether Mr. Curnes is able to work.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Curnes began working for J L Chitty Garbage Service, Inc. on June 30, 2003. He was employed full time as a driver and collector. His last day of work was May 17, 2006. He was off work thereafter because of a neck injury. On or about June 9, Mr. Curnes advised the employer that his injury was work-related. The employer's workers' compensation insurance carrier denied the claim.

Mr. Curnes underwent surgery on July 6 and it was anticipated that he would need two to three months to recuperate. He was released to regular work duties effective September 28 but did not contact the employer to advise of the release. When the employer had not heard from Mr. Curnes, a letter was sent to him on October 27 inquiring about his status. He notified the employer on November 1 that he had been released and reported to work on November 6. He advised the employer that he did not feel ready to return to work because he continued to have pain in his shoulder. He also indicated that he had intermittent numbness in his right arm. The employer advised Mr. Curnes that he had to be able to fully perform his job before he could return to work. The employer requested that he provide medical verification that he could perform the functions of his job. Mr. Curnes has not presented the employer documentation that he is fully able to perform the essential functions of his job.

REASONING AND CONCLUSIONS OF LAW:

Mr. Curnes left his employment on May 17, 2006 because of a medical condition. He was released by his doctor to return to work on September 28. However, he did not notify the employer of the release until over one month later and then only after the employer wrote to him and asked about his status. Although Mr. Curnes returned to work on November 6, he advised the employer that he was not ready to return to work because he was still experiencing problems with his right arm. Given the fact that Mr. Curnes was indicating continued problems with his right arm, it was not unreasonable for the employer to require that he provide medical documentation that he could work. The doctor's release of September 28 was of little value considering the fact that Mr. Curnes still felt physically unable to work. If he was, in fact, able to work, the administrative law judge presumes he would have returned in September when released. It was not unreasonable for the employer to attempt to limit its workers' compensation liability by requiring that all of Mr. Curnes' medical problems be resolved prior to putting him back to work.

Mr. Curnes has not provided the employer proof that all of his medical problems have been resolved. He has not submitted medical documentation to Workforce Development establishing that he is able to work. As stated previously herein, the September 28 release does not establish that he is able to work in light of the fact that he continued to have medical complaints. For the reasons stated herein, the administrative law judge concludes that Mr. Curnes has failed to establish that he is able to work within the meaning of Iowa Code section 96.4(3). Accordingly, benefits are denied.

DECISION:

The representative's decision dated December 26, 2006, reference 01, is hereby affirmed. Mr. Curnes is denied job insurance benefits effective November 5, 2006 as he has failed to establish that he is able to work. Benefits are withheld until such time as he provides proof that he is able to work and re-offers his services to the employer, provided no suitable comparable work is available and he satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs