

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI L STROHMAN
Claimant

APPEAL NO. 08A-UI-09114-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MORTON BUILDINGS INC
Employer

**OC: 08/10/08 R: 01
Claimant: Appellant (2)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Jodi Strohman (claimant) appealed a representative's October 6, 2008 decision (reference 01) that concluded she was not eligible to receive unemployment insurance benefits based on her employment with Morton (employer). The claimant was represented by Michael Houchins, Attorney at Law, and participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing.

ISSUE:

The issue is whether the 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 that: The claimant was hired on May 31, 2000 as a full-time warehouse laborer. The claimant suffered a work-related injury to her shoulder in October 2006. Later she returned to work. In July 2007, the claimant reinjured her shoulder at work. She had shoulder surgery on May 12, 2007. Her physician allowed her to perform light duty work from August 4 to September 15, 2008, but the employer did not have any work available. She was released to return to work without restrictions on September 16, 2008. The employer has not had work for the claimant since May 9, 2008. The claimant filed for unemployment insurance benefits with an effective date of August 10, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow the administrative law judge concludes the claimant is able and available for work.

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.

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work, the claimant has established ability to work. The employer had no work available or was not willing to accommodate the work restrictions. Benefits are allowed.

DECISION:

The representative's October 6, 2008 decision (reference 01) is reversed. The claimant is able to work and available for work effective August 4, 2008. Benefits are allowed, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs