

**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**

**JUDITH A CECAK  
1106 – 13<sup>TH</sup> ST  
BELLEVUE IA 52063-1641**

**LENNOX MFG INC  
PO BOX 250  
MARSHALLTOWN IA 50158**

**STEVE JAYNE  
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**Appeal Number: 06A-UI-07996-DT  
OC: 07/02/06 R: 02  
Claimant: Appellant (2/R)**

**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:

Judith A. Cepak (claimant) appealed a representative's August 3, 2006 decision (reference 01) that concluded she was not qualified to receive unemployment insurance benefits in conjunction with her employment with Lennox Manufacturing, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 24, 2006. The claimant participated in the hearing and was represented by Steve Jayne, Attorney at Law. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. During the hearing, Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the claimant and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law and decision.

ISSUES:

Was the claimant eligible for unemployment insurance benefits by being able and available for work? Is her eligibility affected by virtue of receiving workers' compensation benefits?

FINDINGS OF FACT:

The claimant started working for the employer on January 16, 1995. She worked full-time as an assembler in the employer's Marshalltown, Iowa, air conditioner and furnace manufacturing facility. The last day she physically worked was February 2, 2006. Her supervisor sent her home at that time and indicated she would no longer be allowed to perform her job due to physical restrictions.

The claimant had incurred a work-related neck injury in 2003. As a result, in May 2004 she underwent surgery. However, there was nerve damage to her spinal cord resulting in weakness in her hands and arms. The claimant's injury was processed under workers' compensation, and on June 22, 2005, the treating physician indicated that the claimant reached maximum medical improvement on or about June 1, 2006. The doctor found a permanent partial impairment of 28 percent of the whole person. He imposed presumably permanent physical restrictions of lifting up to ten pounds on an occasional basis, lifting from waist to over head no more than two pounds occasionally, and may push or pull up to 15 pounds occasionally. She is precluded from repetitive work above shoulder height, but may do forward bending, sitting and standing on an occasional basis.

As a result of this report, the employer's workers' compensation carrier began issuing permanent partial disability payments effective the end of June 2005, anticipated to run for 140 weeks. The claimant continued to work through February 6, 2006. On that date her supervisor came to her during her shift and sent her home, saying that there was no further work for her with her restrictions. The employer continued to pay the claimant her regular wage through June 9, 2006. At that point, the regular wage payments ceased but the claimant received a payout of her accrued vacation. After the vacation pay allocation ran out, the claimant established an unemployment insurance benefit year effective July 2, 2006. Her understanding is that there is no opportunity for her to return to her employment with the employer as her restrictions are permanent, despite the employer's claim that she is currently on an "unpaid leave of absence."

Since establishing her claim for unemployment insurance benefits, the claimant has been conducting a work search, having made approximately 15 job contacts. The positions for which she has applied include hostess, cashier, and office/clerical positions; the job requirements of these jobs would fall within the claimant's work restrictions.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

871 IAC 24.22(1) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

The claimant did not request a leave of absence; the fact that the employer may have unilaterally placed her into the status of a leave of absence does not render her unavailable for work. Despite the fact she has some physical restrictions, the claimant has demonstrated that there is work she is available and physically able to do work in some form of employment generally available in the labor market and that she is seeking such work. Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1).

The fact that she continues to receive workers' compensation benefits also does not render her ineligible for unemployment insurance benefits; her workers' compensation benefits are for permanent partial disability, and the law provides for deductibility from unemployment insurance eligibility only for workers' compensation benefits that are for temporary disability. Iowa Code § 96.5-5; 871 IAC 24.13(3)d. Benefits are allowed, if the claimant is otherwise eligible.

During the hearing, it became apparent that there has been at least a de facto or constructive separation from employment, potentially involving Iowa Code § 96.5-1-d and 871 IAC 24.26(6)b.

This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

DECISION:

The representative's August 3, 2006 decision (reference 01) is reversed. The claimant is able to work and available for work effective July 2, 2006. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the separation issue.

ld/cs