

**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**

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**Appeal Number: 06A-UI-06597-LT
OC: 05-21-06 R: 04
Claimant: Appellant (2)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the June 15, 2006, reference 01, decision that denied benefits as of May 21, 2006. After due notice was issued, a hearing was held on July 18, 2006. Claimant participated. Employer did not participate. The issue is whether claimant is able to work. The administrative law judge took judicial notice of the administrative record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed at Kraft Pizza/Oscar Mayer. She was injured at work on or about January 14, 2006 when she strained her arm. The company physician placed her on work restrictions which the company would not meet and placed her on an involuntary medical leave of absence. She obtained a full medical release from her personal treating physician on or about May 30, 2006

after objective testing (EMG) found her to be within normal limits. (Administrative record, June 12, 2006 letter from Loren Soria, M.D.)

REASONING AND CONCLUSIONS OF LAW:

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

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(1), (35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work, with or without restrictions, the claimant has established her ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated June 15, 2006, reference 01, is reversed. The claimant is able to work and available for work effective May 21, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

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