

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TOM K WOOD
Claimant

APPEAL NO: 11A-UI-12479-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

IBM CORPORATION
Employer

OC: 08/14/11

Claimant: Appellant (2)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

Tom K. Wood (claimant) appealed a representative's September 19, 2011 decision (reference 04) that concluded he was not qualified to receive unemployment insurance benefits for an indefinite period in connection with IBM Corporation (employer) because he was not able and available for work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 14, 2011. This appeal was consolidated for hearing with one related appeal, 11A-UI-12478-DT. The claimant participated in the hearing. 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. 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.

ISSUE:

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

FINDINGS OF FACT:

The claimant worked full time for the employer as a project manager. He went on short-term disability in approximately late July 2010. His doctor advised the employer in approximately November or December that the claimant could return to work as long as it was in a less stressful position. The claimant had his last visit with his doctor on January 21, 2011; it was understood at that time that the claimant did not need to continue treatment with the doctor. The claimant was advised that he could discontinue his medication at that time, but to recontact the doctor if further problems occurred.

The claimant was required by the employer to be assessed for social security disability, which occurred in about mid-March 2011; on March 28, 2011 a determination was issued that the claimant was not eligible for social security disability because he was able and available for work. The employer did not have any position available for the claimant, so the employer placed the claimant on an unpaid long-term disability leave. As determined in another decision issued on September 19, 2011 (reference 02), the claimant was subsequently permanently laid

off as part of a reduction in force. As a result, he established a claim for unemployment insurance benefits effective August 14, 2011.

The claimant has been performing a regular work search since establishing a claim for unemployment insurance benefits and has applied for multiple positions which he would be able to perform if the positions were offered to him.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. The claimant was released by his doctor as able to generally return to work by January 21, 2011; he had been medically found to be ineligible for disability benefits because he was able to work by March 28, 2011.

To be found able to work, "[a]n 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." 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 claimant has demonstrated that he is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

DECISION:

The representative's September 19, 2011 decision (reference 04) is reversed. The claimant is able to work and available for work effective August 14, 2011. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css