

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRI J CHASE
Claimant

APPEAL NO. 10A-UI-14138-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HYPRO INC
Employer

OC: 07/11/10
Claimant: Appellant (1)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated October 6, 2010, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on November 29, 2010. Claimant participated personally and was represented by David Stamp, Attorney at Law. Employer participated by Angie Maus, Human Resources; Cindi Baumeister, Human Resource Manager; Dan Heller, Plant Manager; and Karen Touve, Human Resources.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds: Claimant last worked for employer on July 13, 2010.

Claimant was discharged on July 13, 2010 by employer because claimant took an unauthorized smoke break. Claimant sustained a work-related injury while working for employer. Claimant underwent surgery on or about September 22, 2010. Claimant has been off work receiving temporary disability from workers' compensation since September 22, 2010 and for an indefinite period to follow.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 24.23(35) provides:

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

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

Inasmuch as the treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work. Benefits shall be withheld effective September 22, 2010.

DECISION:

The decision of the representative dated October 6, 2010, reference 02, is affirmed. Unemployment insurance benefits shall be withheld effective September 22, 2010, until claimant has been released to return to work.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw