

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL KNOP
Claimant

APPEAL NO: 06A-UI-10714-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST INDUSTRIES INC
Employer

**OC: 09/24/06 R: 01
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Michael Knop (claimant) appealed an unemployment insurance decision dated October 27, 2006, reference 02, which held that he was not eligible for unemployment insurance benefits for the two-week period ending October 7, 2006 because he was not available to work for Midwest Industries (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 20, 2006. The claimant participated in the hearing. The employer participated through Jeff Ogren, Human Resources Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant met the availability requirements of the law for the two-week period ending October 7, 2006.

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 as a full-time tool maker on April 20, 1987. He was off work on medical leave for a non-work-related back injury. He had surgery on July 16, 2006 and his personal physician released him to return to work with a 25-pound lifting restriction on September 20, 2006. The employer needed more information than a weight restriction for liability purposes so arranged for the claimant to see the employer's physician. The employer's physician released the claimant to return to his regular job on October 7, 2006 and the claimant returned to work on October 9, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant meets the availability requirements of the law for the two-week period ending October 7, 2006.

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.

The claimant's personal physician released him to return to work with restrictions on September 20, 2006. These restrictions were due to a non-work-related medical condition and according to unemployment insurance laws, he was not available to work as he had not fully recovered. A "recovery" under Iowa Code section 96.5-1-d means a complete recovery without restriction. White v. Employment Appeal Board, 487 N.W.2d 342, 345 (Iowa 1992) (citing Hedges v. Iowa Department of Job Service, 368 N.W.2d 862, 867 (Iowa App. 1985)). The claimant was released by the employer's physician on October 7, 2006 and returned to work on October 9, 2006. Consequently, he did not meet the availability requirements of the law for the two-week period ending October 7, 2006.

DECISION:

The unemployment insurance decision dated October 27, 2006, reference 02, is affirmed. The claimant was not available for work for the two-week period ending October 7, 2006.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs