

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

TIMOTHY V JONES Claimant IOWA WORKFORCE DEVELOPMENT DEPARTMENT	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO. 08A-UI-06732-MT ADMINISTRATIVE LAW JUDGE DECISION OC: 02/03/08 R: 01 Claimant: Appellant (2)</div>
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Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated July 15, 2008, reference 02, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on August 6, 2008. Claimant participated personally. Exhibit A was admitted into evidence.

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 went off work June 4, 2008 for a cervical spine surgery. Claimant was on layoff when the surgery was scheduled. Claimant was released to return to work on June 5, 2008 with restrictions that would still allow him to work his normal job. Claimant returned to ask for further work but the employer had nothing available. Claimant presented a medical record proving that he was able to return to work June 5, 2008.

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".

Inasmuch as the treating physician has released the claimant to return to work, the claimant has established the ability to work. Benefits are allowed, as claimant has presented a medical release to return to work. Benefits shall be allowed effective June 22, 2008.

DECISION:

The decision of the representative dated July 15 2008, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, effective June 22, 2008, provided claimant meets all other eligibility requirements.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw