

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE L SCHREURS
Claimant

APPEAL NO. 07A-UI-00533-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KRAFT PIZZA CO
Employer

**OC: 12-03-06 R: 04
Claimant: Appellant (2)**

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 8, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on January 31, 2007. Claimant participated. Employer did not participate.

ISSUE:

The issue is whether claimant is able to and available for work.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed and had a surgical procedure on November 10, 2006, and both treating physicians released her to return to work without restrictions on or about November 24, 2006. The employer's physician examined claimant for reported pain in her shoulder in February 2006 and again on October 31, November 7, November 26, 2006 and employer removed her from work with restrictions. The work relatedness is disputed, but Dr. Kumar ordered an MRI on October 28, 2006, which showed work-related tendonitis in her shoulder, not preexisting arthritis as she has in her hands, knees and feet and which has been controlled with medication since 2001. Employer provided no light-duty work.

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 physician and has not been released as being able to work.

Inasmuch as the medical evidence establishes the injury was work-related and the treating physician has released the claimant to return to work, even with 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 January 8, 2007, reference 01, is reversed. The claimant is able to work and available for work effective December 3, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw