

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK D KITTO
Claimant

APPEAL NO. 09A-UI-03417-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 02/23/09
Claimant: Appellant (2)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Mark Kitto, filed an appeal from a decision dated February 23, 2009, reference 03. The decision found him ineligible from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on March 30, 2009. The claimant participated on his own behalf and was represented by John Hemminger.

ISSUE:

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

FINDINGS OF FACT:

Mark Kitto filed a claim for unemployment benefits with an effective date of February 1, 2009. He had been injured in a work-related accident October 21, 2008. His doctor released him to return to work January 18, 2009. The only restriction he has is not to drive a truck due to the vibration, although he is currently driving a truck contrary to the doctor's recommendation, and not lifting above shoulder level. He has a high school diploma.

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".

The claimant has established he is capable of doing any job which does not require him to lift above shoulder level. He may do cashiering, telemarketing, and general convenience store clerking, and other similar types of jobs.

DECISION:

The representative's decision of February 23, 2009, reference 03, is reversed. Mark Kitto is able and available for work, and eligible for benefits, provided he is otherwise qualified.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs