

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

MARY E BROWN
APT 1 D
4317 N FIELDCREST DR
SIOUX CITY IA 51103

BOSTON CONCESSIONS GROUP INC
55 CAMBRIDGE PKWY #200
CAMBRIDGE MA 02141

Appeal Number: 05A-UI-07506-DWT
OC: 05/22/05 R: 01
Claimant: Appellant (2)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Mary E. Brown (claimant) appealed a representative's July 13, 2005 decision (reference 07) that concluded she was not eligible to receive benefits as of May 22, 2005, because she was unable to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 12, 2005. The claimant participated in the hearing. Beth McCord, the office manager for Boston Concessions Group, Inc. (employer), appeared on the employer's behalf. 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:

Is the claimant able to and available for work as of May 22, 2005?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of May 22, 2005, when her job as a bus driver ended for the school year. The claimant performed work for the employer during the week of May 22 and reported the wages she earned this week.

The claimant had knee surgery on Friday, June 3, 2005. The claimant was able to and available for work the week of May 29 with the exception of Friday and Saturday. The employer did not call the claimant to work this week. The claimant filed claims for the weeks ending May 28 and June 4, 2005. The claimant's physician released her to return to work on August 8, 2005.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, she must be able to and available for work. Iowa Code §96.4-3. Even though the claimant had knee surgery on June 3, she was able to and available to work a majority of the week ending June 4, 2005. The claimant is eligible to receive benefits for the weeks ending May 28 and June 4, 2005. The claimant is not eligible to receive benefits as of June 5, 2005.

DECISION:

The representative's July 13, 2005 decision (reference 07) is reversed. The claimant is eligible to receive benefits for the weeks ending May 28 and June 4 because she was able to and available for work. As of June 5, 2005, the claimant is not eligible to receive benefits, because she was not able to work. The claimant's ineligibility shall continue until she reopens her claim and establishes her ability to and availability for work.

dlw/kjw