

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

SHARI L HARDISTY  
507 FIR ST  
SHENANDOAH IA 51601

MANPOWER INTERNATIONAL INC  
MANPOWER TEMPORARY SERVICES  
c/o TALX – UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283

Appeal Number: 05A-UI-08177-SWT  
OC: 07/03/05 R: 01  
Claimant: Appellant (1)

**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, 4<sup>th</sup> 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 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 1, 2005, reference 01, that concluded she was not able to and available for work. A telephone hearing was held on August 24, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Todd Ashenfelter participated in the hearing on behalf of the employer.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant was assigned to work full time as an assembler at Eaton Corporation. She worked from December 2005 to April 15, 2005. On April 15, 2005, the claimant broke her leg outside of work. She was hospitalized and her leg was placed in a cast. The claimant was off work due to the injury until approximately June 15, 2005.

On approximately June 15, 2005, the claimant was fitted with a walking cast and was released by her doctor to do light-duty work with the restriction that she elevate her foot for a few minutes every hour. The employer allowed her to return to work on a special project that involved light-duty work that met the claimant's restrictions. She worked in that job until about June 22, 2005, when the line she was working on closed down. She was going to return to work in her normal job, but when the walking cast was removed, the doctor determined her leg was not healing properly. Her doctor placed an air splint on her leg and again released her to work with the restriction that she elevate her foot for a few minutes every hour. She notified the employer about the restrictions and was informed that her normal job would not allow her to elevate her foot every hour, and there was no other job that met her restrictions.

The claimant filed a new claim for unemployment insurance benefits with an effective date of July 3, 2005. As of July 3, 2005, the claimant could not perform her usual job, but she could perform work as a store clerk or childcare worker, which are jobs she has applied for and that she is qualified to perform.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code Section 96.4-3. The unemployment insurance rules provide that for an individual to be eligible to receive benefits the individual must be 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. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which others engage in as a means of livelihood. 871 IAC 24.22(1).

The evidence establishes that the claimant was and is able to perform jobs available in the labor market. She, therefore, meets the availability requirements of the law. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

#### DECISION:

The unemployment insurance decision dated August 1, 2005, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

saw/s