

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

CHANCE H MAYFIELD
PO BOX 434
MELCHER IA 50163-0434

PELLA CORPORATION
c/o SHEAKLEY UNISERVICE INC
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-04875-S2T
OC: 02/05/06 R: 02
Claimant: Appellant (4)

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 - Able and Available

STATEMENT OF THE CASE:

Chance Mayfield (claimant) appealed a representative's May 4, 2006 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to perform work for Pella Corporation (employer) due to injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2006. The claimant participated personally. The employer was represented by Richard Carter, Hearings Representative, and participated by Randy Clark, Human Resources Representative.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on August 25, 2003, as a full-time Logistics Operator 2. The claimant suffered an injury on or about February 24, 2005. He reported it as a work-related injury. The claimant was released to return to work with restrictions in May 2005. He sought work and the employer attempted to accommodate the claimant's restrictions. On February 5, 2006, the claimant applied for unemployment insurance benefits.

The employer had work which met the claimant's restrictions. The claimant appeared and performed the restricted activity on February 21, 22 and 23, 2006, but requested to leave early. The employer granted the claimant's request. The claimant requested and was granted a leave of absence from February 24 to March 17, 2006.

On March 20, 2006, the claimant returned to work with a new restriction. He was not allowed to stoop. The employer had no work available to meet the claimant's new restrictions. On April 27, 2006, the claimant's restrictions changed and the employer had work available. The claimant worked but asked to leave early. On April 28, 2006, before the start of his shift, the claimant asked if he could go home. The employer released the claimant but asked him to call the employer the following week. The employer did not hear from the claimant so it tried to call the claimant. Finally on May 17, 2006, the employer reached the claimant. Work is available which meets the claimant's restrictions but the claimant finds the work demanding and unfulfilling. The claimant has not worked since April 27, 2006.

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 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".

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is 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.

(1) Able to 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 is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work, the claimant has established ability to work. The employer had no work available to accommodate the work restrictions until April 27, 2006. After April 27, 2006, the work was available but the claimant did not wish to perform the work. Benefits are allowed through the week ending April 29, 2006. After April 29, 2006, benefits are denied.

DECISION:

The representative's May 4, 2006 decision (reference 02) is modified in favor of the appellant. Benefits are allowed through the week ending April 29, 2006. After April 29, 2006, benefits are denied because work is available but the claimant does not wish to perform the work.

bas/kkf