IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
Division of Administrative Hearings
Lucas State Office Building
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

DAVID K HANAN
319 PARK DRIVE
HAMILTON IL 62341-1055

IOWA WORKFORCE DEVELOPMENT
CAROL PAULUS
150 DES MOINES STREET
DES MOINES IA 50309

DAN ANDERSON, IWD

Appeal Number: **07-IWDUI-028**
OC: 01/29/06
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 the department. 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)

March 2, 2007
_____
(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22 – Benefits eligibility
871 IAC 24.23 – Availability disqualifications

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated January 23, 2007, reference 07, which held the claimant ineligible for benefits effective December 16, 2006, because his department approved training was discontinued due to him not being able and available for work.

The hearing was held pursuant to due notice on February 26, 2007, by telephone conference call. The claimant did not participate. Tonya Smith, Administrative Assistant for TRA, participated on behalf of Iowa Workforce Development.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered all of the evidence in the record, finds: The claimant filed a claim for unemployment insurance benefits effective January 29, 2006. The department granted the claimant approval for department approved training for the period from January 17, 2006 to December 17, 2007.

The claimant submitted an additional request for training from the period January 16, 2007 to May 11, 2007. The department learned that the claimant did not begin his class work as scheduled due to a hospitalization (health problems). Although the claimant is not required to meet the usual availability requirements of the law during the period of training, he is required to show satisfactory attendance and progress regarding the course requirements.

The claimant made satisfactory arrangements regarding his course work with instructors, and he was able to continue his class work schedule on February 5, 2007. The department issued a new decision dated February 10, 2007 qualifying the claimant for training and making him eligible for benefits effective February 3, 2007.

The claimant did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able 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(96) 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.

> (2) *Available for work*.

Iowa Code Section 96.4-6a provides:

6.a. An otherwise eligible individual shall not be denied benefits for any week because the individual is in training with the approval of the director.

871 IAC 24.39 provides:
(3) The claimant must show satisfactory attendance and progress in the training course.

The administrative law judge concludes that the claimant recovered from his health issues to make himself able and available for continuing course work in his department approved training effective February 3, 2007 pursuant to a department decision dated February 10, 2007. The claimant is entitled to receive benefits, provided he is otherwise eligible.

DECISION:

The decision of the representative dated January 23, 2007, reference 07, is MODIFIED in favor of the claimant. The department lifted the disqualification of the claimant by issuing a new decision dated February 10, 2007 that made the claimant eligible for benefits effective February 3, 2007. The claimant returned to class work, and is now satisfying the department approved training requirements.

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