

**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**

**STACEY N FUGLE
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SHENANDOAH IA 51601-1513**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES
c/o FRICK UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864**

**Appeal Number: 06A-UI-04914-LT
OC: 12-18-05 R: 01
Claimant: Appellant (1R)**

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)

Iowa Code section 96.4(3) - Able and Available

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the May 2, 2006, reference 06, decision that denied benefits for the period from April 9 through 15, 2006 for being unable to work. After due notice was issued, a hearing was held on May 23, 2006. Claimant participated. Employer participated through Todd Ashenfelter.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time temporary inspector/material handler assigned to NFK Corporation from April 4, 2006 through April 11, 2006, when she reported to Manpower on-site supervisor Jessica Sump on April 12 she was having shoulder problems, left the assignment, and asked if she could return after her injury was better. She did report to Scott Stickler, NFK supervisor,

that she had shoulder pain when lifting parts into a washer and that her shoulder “popped.” She saw Ron Peterson, PAC of Clarinda Medical Associates on April 17 and he told her to schedule an appointment with an orthopedic surgeon in Omaha. She saw Peterson again on May 17 after she got her insurance on May 12 and scheduled the appointment with an orthopedic surgeon on May 25.

She did not ask Manpower for work not involving use of her shoulder, gave employer no medical documentation, but had no medical restrictions. She has not obtained a medical opinion about whether the injury was either caused or aggravated by the employment but acknowledged she has a preexisting condition ongoing over the last couple of years and has not filed a workers’ compensation claim.

As of the hearing date on May 23, Manpower considers claimant to have voluntarily quit on April 18, 2006, due to a lack of contact. This separation has not yet been addressed by a fact-finder.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not 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.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Inasmuch as claimant removed herself from work without a medical directive, she is not able to or available for work. Furthermore, she has not established that the injury was work-related and there is no medical restriction keeping her from working, the claimant has not established her ability to work. Benefits are withheld until such time as the claimant obtains a medical release to return to some type of work of which she is capable of performing given any medical restrictions.

DECISION:

The representative's decision dated May 2, 2006, reference 06, is affirmed. The claimant is not able to work and available for work effective April 9, 2006. Benefits are withheld until such time as the claimant obtains a medical release to return to work.

REMAND:

The separation issue delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

dm\kkf