

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DUANE L DOW Claimant IOWA WORKFORCE DEVELOPMENT DEPARTMENT	<div>68-0157 (9-06) - 3091078 - EI</div> <div>APPEAL NO: 12A-UI-06421-DT</div> <div>ADMINISTRATIVE LAW JUDGE DECISION</div> <div>OC: 06/05/11 Claimant: Appellant (4)</div>
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Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Duane L. Dow (claimant) appealed a representative's May 30, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits as of May 20, 2012 because of not being able to work due to illness. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on June 28, 2012. The claimant participated in the hearing. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant had been hospitalized on or about May 20. The administrative law judge takes official notice of the fact that there has been a subsequent representative's decision issued on June 13, 2012 (reference 01), which allows benefits as of June 10, 2012, issued in light of claimant's release to full duty. However, the claimant also was released as able to return to light duty work as of May 31, 2012, a Thursday.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). Being able and available

is based upon the claimant's status for the major portion of the regular work week. 871 IAC 24.22(2)h.

From May 20 through June 2, the claimant was not able and available for work the majority of the regular work weeks. However, the claimant has demonstrated that as of the benefit week beginning June 3, 2012, he was able to work in some gainful employment, even if not beyond light-duty. Benefits are allowed as of June 3, if the claimant is otherwise eligible.

DECISION:

The representative's May 30, 2012 decision (reference 01) is modified in favor of the claimant. The claimant was not able and available for work from May 20 through June 2; but as of the benefit period beginning June 3, he is sufficiently able and available for work. As of June 3, the claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw