

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

DUANE E BRYANT
824 FULTON
KEOKUK IA 52632

REMEDY TEMPORARY SERVICES INC
c/o TALX UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166 6864

Appeal Number: 05A-UI-08832-DWT
OC: 07/03/05 R: 04
Claimant: Appellant (2)

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 to and Available for Work

STATEMENT OF THE CASE:

Duane E. Bryant (claimant) appealed a representative's August 19, 2005 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits as of July 3, 2005, because he was not able to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 13, 2005. The claimant participated in the hearing. No one on behalf of Remedy Temporary Services, Inc. (employer) participated in the hearing. The employer failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's representative/witness could be contacted to participate in the hearing. 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:

As of July 3, 2005, is the claimant able to work?

FINDINGS OF FACT:

The employer assigned the claimant to various assignments until April 18, 2005. On April 18, 2005, the claimant broke his hand outside of work. As a result of this injury, the claimant's left arm was in a cast from his hand to his elbow. The claimant is right-handed.

Since April 18, 2005, the employer has not assigned the claimant any job even though the claimant's doctor released him to return to work without any work restrictions. As of July 3, the claimant still had the cast on his arm. In late July the cast was removed.

As of July 3, the claimant was capable of driving a forklift, performing farm work and doing limited mechanic work. The claimant usually worked at jobs driving a forklift.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code §96.4-3. Even though the employer made a business decision the claimant would not be assigned a job while he had a cast, this does not make the claimant unable to work. Even if a claimant is unable to perform work he has done in the past, but establishes he is able to perform meaningful work even with a work restriction, a claimant may be able to work. In this case, the claimant had a cast but did not have any work restrictions. The claimant's doctor released him to work and the claimant usually operated a forklift, which he could still do with the cast on his arm. The claimant established that as of July 3, 2005, he was able to and available for work.

DECISION:

The representative's August 19, 2005 decision (reference 01) is reversed. The claimant is eligible to receive benefits as of July 3, 2005, because he is able to and available for benefits.

dlw/kjf