

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

<b>CARA L SMITH</b> Claimant  <b>IOWA WORKFORCE DEVELOPMENT DEPARTMENT</b>	68-0157 (9-06) - 3091078 - EI  <b>APPEAL NO. 06A-UI-10532-LT</b>  <b>ADMINISTRATIVE LAW JUDGE DECISION</b>  <b>OC: 08-27-06 R: 04</b> <b>Claimant: Appellant (1)</b>
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Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 26, 2006, reference 04, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 13, 2006. Claimant participated.

**ISSUE:**

The issue is whether claimant was able to and available for work the week ending September 16, 2006.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was kept off work for the one week ending September 16, 2006 for surgical recovery. She was released to return to work or her work search as of September 20 and conducted her work searches for that week.

**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 the week ending September 16, 2006.

Iowa Code § 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 physician and has not been released as being able to work.

Inasmuch as the medical condition was not work-related and the treating physician kept her off work for recovery from surgery, the claimant has not established her ability to work for that one week. Benefits are allowed effective September 17, 2006.

**DECISION:**

The representative's decision dated October 26, 2006, reference 04 is affirmed. The claimant is not able to work and available for work the one week ending September 16, 2006. Benefits are allowed effective September 17, 2006.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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