

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

Appeal Number: 07-IWDUI-121
OC: 01/07/07
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

DAVID M MORELAND
2323 MAPLE STREET
DES MOINES IA 50317-6552

STATE CLEARLY

CAMERON MITCHELL INC
1588 NE 58TH AVENUE
DES MOINES IA 50313-1622

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.

INVESTIGATION AND RECOVERY
IOWA WORKFORCE DEVELOPMENT
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

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.

DAN ANDERSON, IWD

(Administrative Law Judge)

September 14, 2007

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22 – Benefits eligibility
871 IAC 24.23(1) – Availability disqualifications/Illness

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated August 17, 2007, reference 04, which held the claimant ineligible for benefits for the 2-weeks ending April 21, 2007, because the claimant was ill for the major portion of the weeks.

The hearing was held pursuant to due notice on September 10, 2007, by telephone conference call. The claimant did not participate. The employer submitted a fax communication in lieu of participation. Irma Lewis, Investigator, 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 7, 2007. The claimant filed unemployment claims for the weeks ending April 14, and April 21, 2007, and he received benefits each week.

During a cross match investigation by the department, Investigator Lewis received information that the claimant missed scheduled work with Cameron Mitchell Inc. for the two-weeks ending April 21, 2007 due to a toothache and tooth extractions. The claimant called his employer and advised it that he was missing work due to toothache problems.

The claimant acknowledged in his appeal letter that he missed work due to tooth extractions.

The claimant failed to respond to the hearing notice. The employer submitted a fax to Investigator Lewis in lieu of participation in this hearing.

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.

871 IAC 24.23 Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(12) An individual who is ill, and presently not able to perform work due to illness.

The administrative law judge concludes that the claimant is disqualified from receiving benefits for the two-weeks ending April 21, 2007, as he was not able and available for work due to illness (toothache/extractions) pursuant to the law sections cited above. The employer confirmed to the department that the claimant missed work due to illness, and the claimant acknowledged this condition in his appeal letter.

DECISION:

The decision of the representative dated August 17, 2007, reference 04, is **AFFIRMED**. The claimant was not able and available for work the two-weeks ending April 21, 2007, and he is disqualified from receiving benefits for that period.

rls