

**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**

**CAROLYN M MINELLA  
3140 INDIANOLA AVE TRLR 1  
DES MOINES IA 50315-2431**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-05924-JTT  
OC: 04/23/06 R: 02  
Claimant: Appellant (4)**

**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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Carolyn Minella filed a timely appeal from the June 5, 2006, reference 05, decision that denied benefits effective April 17, 2006 and concluded she was not able to work. After due notice was issued, a hearing was held on June 26, 2006. Claimant participated. The administrative law judge took official notice of the Agency's administrative file.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: On April 24, 2006, Carolyn Minella was discharged from her employment with Access Direct Telemarketing/PRC for no disqualifying reason. Ms. Minella established a claim for benefits that was effective April 23, 2006, and received benefits totaling \$880.00 for the period of April 23-May 20, 2006.

At the time Ms. Minella established a claim for benefits, she had been under a doctor's care for approximately two months due to swelling and pain in her legs. Ms. Minella's health condition had interfered with her telemarketing duties at Access Direct/PRC and had necessitated a leave of absence effective February 14. On March 30, Ms. Minella's doctor released her to work four-hour days for one week to see whether Ms. Minella could tolerate the work and whether Ms. Minella could be released to full-time work. Because of the separation from the employment at Access Direct/PRC, Ms. Minella did have the opportunity to see whether she could tolerate working four hours per day for a week. Ms. Minella has not yet been released to return to full-time work without restrictions. Ms. Minella continues to have problems with numbness and swelling in her leg. Ms. Minella's leg pain stems from a prior back surgery. After the back surgery, Ms. Minella's doctor recommended that she neither stand nor sit for eight hours because of permanent damage to her leg.

Since separating from the employment with Access Direct/PRC, Ms. Minella worked one day at a temporary employment assignment. That assignment required Ms. Minella to stand to load paper into a machine. Ms. Minella could not tolerate the work and did not return after the first day.

Ms. Minella provided the administrative law judge with a doctor's release dated June 27, 2006. The release indicates as follows: "May work but would have to find a job that does not require constant lifting > [greater than] 20-30 lb., no prolonged standing, bending." The release says nothing about sitting for extended periods. Ms. Minella is seeking customer service type positions with physical requirements similar to her prior telemarketing position.

#### REASONING AND CONCLUSIONS OF LAW:

The question is whether the evidence in the record establishes that Mr. Minella has been able and available for work since establishing her claim for benefits.

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, (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The greater weight of the evidence in the record establishes that Ms. Minella was not able to work prior to the release issue on June 27, 2006. The evidence indicates that effective June 27, Ms. Minella was released to perform the sort of full-time, sedentary work she had previously performed. The administrative law judge concludes that that Ms. Minella is able and available for work effective June 27, 2006.

**DECISION:**

The Agency representative's June 5, 2006, reference 05, decision is affirmed in part and reversed in part as follows. The claimant was not able and available for work during the period of April 17-June 26, 2006 and is, therefore, not eligible for benefits for that period. The claimant is able and available for work effective June 27, 2006, and is eligible for benefits beginning June 27, provided she is otherwise eligible.

jt/pjs