

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

MARYANN BLEAN
908 – 3RD AVE
FULTON IL 61252

IOWA WORKFORCE DEVELOPMENT
DEPARTMENT

Appeal Number: 04A-UI-08792-CT
OC: 06/06/04 R: 04
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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Maryann Blean filed an appeal from a representative's decision dated August 12, 2004, reference 01, which denied benefits effective July 11, 2004 on a finding that she was not able to work. Due notice was issued scheduling the matter for a telephone hearing to be held on September 9, 2004. Ms. Blean submitted a statement from her doctor, admitted as Exhibit A, but did not participate in the hearing.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Ms. Blean underwent surgery on July 14 and again on July 31, 2004. According to her treating physician,

she was unable to work for two days following each surgery. The doctor confirmed that Ms. Blean has been able to work full time as of August 2, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Ms. Blean satisfied the availability requirements of Iowa Code Section 96.4(3) as of July 11, 2004. She had surgery on July 14 and was unable to work during the following two days. Therefore, she was unable to work a total of three days during the week ending July 17, 2004. Because she was unable to work for the major portion of the workweek, Ms. Blean is not entitled to benefits for the week ending July 17, 2004.

Ms. Blean was again able to work as of July 19 as her July 14 surgery only incapacitated her for two days and she did not again have surgery until July 31. For this reason, benefits are allowed effective July 19. Ms. Blean's surgery of July 31 incapacitated her for two days, August 1 and 2. Because the surgery of July 31 did not incapacitate her for the major portion of the week, which began August 1, no disqualification is imposed in reference to the July 31 surgery.

After considering all of the evidence, the administrative law judge concludes that Ms. Blean was unable to work only during the one week ending July 17, 2004.

DECISION:

The representative's decision dated August 12, 2004, reference 01, is hereby modified. Ms. Blean is disqualified from receiving job insurance benefits for the week ending July 17, 2004 as she was not able to work for the major portion of the workweek. Benefits are allowed effective July 19, 2004, provided she satisfies all other conditions of eligibility.

cfc/pjs