

October 17, 2005) – and released him to light duty (no neck flexion) on September 12, 2005. (Claimant's Exhibit A, page 1) When claimant presented to employer it had no work to comply with the restrictions and told him he could only return to work with a full medical release without restrictions. Claimant remains under his physician's care with work restrictions. (Claimant's Exhibit A, page 2)

#### REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work 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 24.23(1) provides:

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

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

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 injury or aggravation of a preexisting condition was work-related and the treating physician has released the claimant to return to work, even with restrictions, the claimant has established ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

#### DECISION:

The representative's decision dated October 11, 2005, reference 02, is reversed. The claimant is able to work and available for work effective September 11, 2005. Benefits are allowed, provided the claimant is otherwise eligible.

dml/kjw