

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**MICHAEL R FONTANA**  
Claimant

**APPEAL 16A-UI-01356-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GRINNELL MUTUAL REINSURANCE CO**  
Employer

**OC: 12/27/15**  
**Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) – Availability Disqualifications

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the January 28, 2016, (reference 02) unemployment insurance decision that denied benefits based upon not being able to or available for work effective December 27, 2015. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2016. Claimant participated. Employer participated through human resource director, Karen Richards, and human resource executive assistant, Melissa Feisel. Claimant's Exhibit A was received.

**ISSUE:**

Was the claimant able to work effective December 27, 2015?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is working as an intern for his continuing education, covered by Training Extension Benefits (TEB). He had surgery for a personal medical condition and was unable to attend school or work between Thursday, December 17, 2015, and Wednesday, January 6, 2016. He returned to school and work on Thursday, January 7, 2016. (Claimant's Exhibit A)

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective December 20, 2015, through the week-ending January 9, 2016.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(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.

Because claimant was available the majority of the work week ending December 19, 2015, he is eligible for benefits that week. He was unable to work and ineligible for benefits for the three weeks ending January 9, 2016. He is eligible for benefits again effective January 10, 2016. The employer's account is not chargeable while claimant is in the TEB program.

## **DECISION:**

The January 28, 2015, (reference 02) unemployment insurance decision is modified in favor of the appellant. The claimant was ineligible for benefits the three weeks ending January 9, 2016. Benefits are allowed, effective January 10, 2016, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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