

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**RAYMOND J MICKLES**  
Claimant

**APPEAL NO. 07A-UI-07610-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RICK BRAAKSMA**  
**R & R REPAIR**  
Employer

**OC: 06/17/07 R: 03**  
**Claimant: Appellant (2)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the August 1, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on August 22, 2007. Claimant participated and was represented by Christopher Spaulding, Attorney at Law. Employer did not participate. Claimant's Exhibit A was received.

**ISSUE:**

The issue is whether claimant is able to and available for work effective June 17, 2007.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant remains employed but has not worked since he suffered a work injury to his back in August 2006 on a service call. He was taken off work for a couple of months and then released to light duty on March 29, 2007 and offered his services to employer. Braaksma told him there was no work as long as he had light duty restrictions since all available work was heavy manual labor. Claimant's functional capacity evaluation (FCE) on February 12, 2007 indicated he was capable of medium duty work. Claimant has a history of cooking and dietary aide work that would fit within those restrictions.

**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 § 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) and (35) provide:

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.

(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 was work-related and the treating physician has released the claimant to return to work, even with restrictions the claimant has established his ability to work. Because the employer had no work available or was not willing and/or able to accommodate the work restrictions, benefits are allowed.

**DECISION:**

The representative's decision dated August 1, 2007, reference 01. is reversed. The claimant is able to work and available for work effective June 17, 2007 (the original claim date). Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css