

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD L DANIELS  
415 HERITAGE PLACE  
IOWA CITY IA 52317**

**IAC IOWA CITY LLC  
c/o TALX UCM SERVICES  
PO BOX 283  
ST LOUIS MO 63166-0283**

**APPEAL NO. 09A-UI-16872-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**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:

***Employment Appeal Board  
4<sup>th</sup> 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.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RICHARD L DANIELS**  
Claimant

**APPEAL NO. 09A-UI-16872-VS**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IAC IOWA CITY LLC**  
Employer

**OC: 10/04/09**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated November 3, 2009, reference 01, which held claimant ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on January 28, 2010, in Cedar Rapids, Iowa. Claimant participated. Employer participated by Teresa Feldmann, Assistant Human Resources Manager. The record consists of the testimony of Richard Daniels; the testimony of Tonya Daniels; and the testimony of Teresa Feldmann.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, makes the following findings of fact:

The employer is a manufacturer of interior automotive parts. Its plant is located in Iowa City, Iowa.

On July 22, 2009, the claimant returned to work after a layoff. At the time of the original layoff, the claimant worked as a truck driver. When he was recalled, he was assigned to a heavy manual labor job in accordance with the collective bargaining agreement between the employer and the union representing its employees. The claimant had had non-work-related problems with his low back and as a result of returning to this manual labor job, he began experiencing back pain. He was only able to work on July 22, 2009, and July 23, 2009. He was taken off work by his physician. He was put back on layoff and received short-term disability benefits.

The claimant physician released him for light-duty work on September 25, 2009. He had a 35-pound lift limit or less and was limited to four hours a day, five days a week and occasional bending. (Exhibit A) The claimant could have returned to his truck driving job, but was unable to work his manual labor job. The employer then placed the claimant on an involuntary leave of

absence. He was not terminated and was able to return to work on January 25, 2010. The claimant's short-term disability benefits expired on October 29, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

Workforce Development rule 871 IAC 24.1(113) provides as follows:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials; including temporarily furloughed employees and employees placed on unpaid vacations.

b. Quits. A quit is a termination of employment initiated by the employee for any reason except mandatory retirement or transfer to another establishment of the same firm, or for service in the armed forces.

c. Discharge. A discharge is a termination of employment initiated by the employer for such reasons as incompetence, violation of rules, dishonesty, laziness, absenteeism, insubordination, failure to pass probationary period.

d. Other separations. Terminations of employment for military duty lasting or expected to last more than 30 calendar days, retirement, permanent disability, and failure to meet the physical standards required.

The Iowa Supreme Court has ruled that where an employer places an employee on an involuntary leave of absence due to the employee's health condition, the separation from the employment is to be deemed a discharge and that the person's work ability and work availability must be assessed. See Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989).

The evidence in this case established that the claimant's status changed from a voluntary leave of absence to an involuntary leave of absence on September 25, 2009, when the employer was unable or unwilling to accommodate the claimant's light-duty restrictions.

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 and (2) provide:

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 claimant established his ability to work as of September 25, 2009. Although he did have some restrictions, he was able to drive a truck. He credibly testified that if he had a driving position, he would be able to work. Since the claimant was able and available to work, benefits are allowed.

**DECISION:**

The decision of the representative dated November 3, 2009, reference 01, is reversed. Unemployment insurance benefits are allowed, provided claimant is otherwise eligible.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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