

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

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RICHARD JACOBSON ET AL
JACOBSON INDUSTRIAL SERVICES
1321 E EUCLID AVE
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Appeal Number: 06A-UI-03604-LT
OC: 11-13-05 R: 02
Claimant: Appellant (2R)

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)

Iowa Code §96.4(3) - Able and Available
Iowa Code §96.5(3)a - Work Refusal

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the March 16, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 18, 2006. Claimant did participate. Employer did participate through Frank Tursi.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a temporary worker at various light industrial assignments that required standing. She first saw a doctor on February 22 and was told at that time that she needed to sit as needed but she went to work even with pain. On February 23 she left the assignment early due to pain in her feet and asked for a sitting job on February 24. None was available at that

particular assignment or elsewhere at the time. She also worked on March 16 and March 17 at another job that required standing but no further work was available after that job was completed. Claimant returned to employer (Nate and Mariala) for additional assignments and called every Monday. No other assignments were available that would allow claimant to sit as needed pursuant to her medical restriction dated March 16, 2006 that restricts standing and required that she must be able to sit as needed.

The separations from the employer's assignments on February 23, 2006 and March 7, 2006 have not yet been resolved and are remanded for an initial investigation and determination.

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 24.22(1)(2) 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.

(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.

Claimant did not refuse a work assignment but was merely unable to continue with the February 23 assignment. Thus, her ability to work is the only issue. Although claimant cannot perform her regular light industrial laborer duties for employer, she does have a work history involving sitting clerical work. Thus, claimant is able to perform some work given her training and work history, she is able to work. Accordingly, benefits are allowed.

DECISION:

The March 16, 2006, reference 01, decision is reversed. The claimant is able to work and available for work effective February 19, 2006. Benefits are allowed.

REMAND: The separation issues delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

dml/tjc