

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L VAUGHAN
Claimant

APPEAL NO. 13A-UI-01956-H2

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/20/13
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 15, 2013, reference 02, decision that denied benefits. After due notice was issued, an in-person hearing was held on March 19, 2013 at Des Moines, Iowa. The claimant did participate and was represented by Nicholas W. Platt, Attorney at Law. Claimant's Exhibits one through four were entered and received into the record.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was injured in a work related accident. As a result of that accident the claimant has permanent work restrictions which his former employer was unable to accommodate. While the claimant may have work restrictions that prevent him from returning to his previous position with his last employer, the claimant's functional capacity examination and his current work restrictions make clear that there are jobs in the workforce he could perform.

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)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.

While the claimant may not be able to perform job duties and work positions he has previously had, he is physically able to work. Thus, the administrative law judge concludes that the claimant is physically able to and available for work. Accordingly, benefits are allowed.

DECISION:

The February 15, 2013, reference 02, decision is reversed. The claimant is able to work and available for work effective January 20, 2013. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/tll