

**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**

**LYDIA S BAKER-CRAWLEY  
1701 MT PLEASANT  
BURLINGTON IA 52601**

**METROGROUP CORP  
901 W BOND  
LINCOLN NE 68521**

**Appeal Number: 05A-UI-11866-LT  
OC: 06-05-05 R: 04  
Claimant: Appellant (4)**

**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

STATEMENT OF THE CASE:

Claimant filed a timely appeal from the November 14, 2005, reference 06, decision that denied benefits. After due notice was issued, a hearing was held on December 7, 2005. Claimant did participate. Employer did participate through Linda McDowell. The administrative law judge took judicial notice of the administrative record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time machine operator from September 2005 through November 7, 2005 when she was involuntarily separated from her employment. The separation issue is being addressed in a fact-finding interview set for December 13, 2005, at 1:00 p.m.

Her last day worked was October 14, 2005, when she experienced an aggravation of a preexisting back injury. She was not sure if it was work related and did not report it as such to employer at any time during her employment. Employer was aware of the back injury history when she was hired. On October 13 she was given medical restrictions, but since the injury was not reported as work aggravated, employer did not accommodate those limitations. Employer terminated the employment relationship as of November 7, and her physician released her to return to work without restriction on November 14, 2005.

#### 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 from October 16 through November 5, 2005.

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.

871 IAC 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.

Inasmuch as the injury was not established or reported to be work-related and the treating physician has not released the claimant to return to work without restriction as of the separation date November 7, 2005, the claimant has not established her ability to work during that time. Benefits are withheld from October 16 through November 5, 2005, because claimant was unable to perform her regular job duties. But after the separation, in spite of the same restrictions, she was able to perform some work, even if it was not the same as she had performed for this employer prior to the termination from employment. Benefits are allowed, provided the claimant is otherwise eligible effective November 6, 2005.

DECISION:

The representative's decision dated November 14, 2005, reference 06, is modified in favor of the appellant. The claimant was not able to work and available for work from October 16 through November 5, 2005. Thereafter, benefits are allowed, provided the claimant is otherwise eligible.

dml/kjw