

**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**

**BRADFORD C MILLER  
2213 MIDDLE CALMAR  
DECORAH IA 52101**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**MARION BEATTY  
ATTORNEY AT LAW  
PO BOX 28  
DECORAH IA 52101-0023**

**Appeal Number: 04A-UI-04125-CT  
OC: 09/07/03 R: 04  
Claimant: Appellant (2)**

**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, 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.

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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Bradford Miller filed an appeal from a representative's decision dated April 2, 2004, reference 02, which held he was not eligible to receive job insurance benefits from September 16 through December 18, 2003 because he was not able to work. After due notice was issued, a hearing was held by telephone on May 4, 2004. Mr. Miller participated personally and was represented by Marion Beatty, Attorney at Law, who offered additional testimony from Stanley Finholt of Finholt Construction, Inc.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Miller underwent surgery on his right arm on September 6, 2003. He was laid off from Finholt Construction, Inc. due to lack of work effective September 8, 2003. Five other individuals were laid off at the same time because a major project the employer anticipated beginning did not start. As of the date of the hearing herein, there were still individuals on layoff as a result of the project not starting when anticipated.

Mr. Miller's doctor did not want him to use his right arm for lifting so that his injury could heal properly. His doctor indicated he could return to work as of December 18, 2003. Mr. Miller's primary job was to work as a carpenter but he also supervised employees. His employer did not have any work of any type for him until January of 2004. Mr. Miller has both an undergraduate and graduate degree and has previously been certified to teach in kindergarten through twelfth grade. He has prior work experience as a telemarketer. Iowa Workforce Development has coded him as a "Group 3" claimant, meaning he is on a temporary layoff.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Miller satisfied the requirements of Iowa Code Section 96.4(3) during the period from September 16 through December 18, 2003. Section 96.4(3) provides that an individual must be physically able to engage in work activity as a condition of receiving job insurance benefits. However, the law does not require that the individual be able to perform his usual occupation, just some employment which is engaged in by others as a means of livelihood. See 871 IAC 24.22(1). Mr. Miller's only restriction during the period at issue was that he not use his right arm for lifting. Inasmuch as he has a graduate degree, the administrative law judge concludes that he has the capacity to perform work other than as a carpenter. That is, he has the aptitude to acquire new skills in different fields. Moreover, he has worked as a telemarketer in the past. His limited use of the right arm would not interfere with his ability to again work as a telemarketer.

For the reasons stated herein, the administrative law judge concludes that Mr. Miller was able to work within the meaning of the law during the period at issue. Accordingly, benefits are allowed.

DECISION:

The representative's decision dated April 2, 2004, reference 02, is hereby reversed. Mr. Miller was able to work from September 16 through December 18, 2003. Benefits are allowed, provided he satisfied all other conditions of eligibility.

cfc/b