

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

ROBERT FRENCHER
1054 – 14TH ST
DES MOINES IA 50314-2239

PEOPLE 2.0 GLOBAL INC
780 E MARKET ST #120
WEST CHESTER PA 19382

Appeal Number: 06A-UI-05732-ET
OC: 04-02-06 R: 02
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)

Section 96.4-3 - Able and Available
Section 96.6-2 - Timeliness of Appeal

STATEMENT OF THE CASE:

The claimant appealed a representative's decision dated May 3, 2006, reference 04, which denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 20, 2006. The claimant participated in the hearing. The employer provided phone numbers prior to the hearing but was not available at those numbers at the time of the hearing and did not participate in the hearing.

FINDINGS OF FACT:

Having heard the testimony and having examined the evidence in the record, the administrative law judge finds: A disqualification decision was mailed to the claimant's last-known address of record on May 3, 2006. The claimant was in the process of moving and did not receive the

decision prior to the appeal due date. He filed an appeal May 31, 2006, when he received the decision. The claimant has demonstrated he had the intent to appeal but was unable to do so because he had not received the decision. Consequently, the administrative law judge concludes the appeal is timely.

The claimant was employed as a full-time general laborer for People 2.0 Global, last assigned to Holcom Concrete from April 2005 to March 30, 2006. He sustained a knee injury while at work and was unable to work from March 27 to March 30, 2006. After that date he asked the employer if it had any additional work but the employer indicated it did not. The claimant obtained a full doctor's release June 20, 2006.

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.

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work, the claimant has established ability to work. Because the employer had no work available, benefits are allowed effective the week ending June 22, 2006.

DECISION:

The representative's decision dated May 3, 2006, reference 04, is modified in favor of the appellant. The claimant's appeal is timely. The claimant is able to work and available for work effective June 20, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

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