

**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**

**LINDA BORSHEIM  
1717 KIRKWOOD BLVD  
DAVENPORT IA 52803-3828**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**Appeal Number: 06A-UI-06774-LT  
OC: 03-12-06 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, 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

Claimant filed a timely appeal from the June 28, 2006, reference 03, decision that denied benefits. After due notice was issued, a hearing was held on July 24, 2006. Claimant participated. The issue is whether claimant was able to work and available for work effective June 6, 2006.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed as a full-time laborer assigned to NIS via Riverside Staffing Service through June 6, 2006 when she was injured on the job. She called Riverside and told it she hurt her arm at work but did not seek treatment. Riverside told her to take the rest of the week off and call again when she felt able to work. Although she filed a claim for benefits that week, her earnings

exceeded her benefit amount by more than 125 percent. She called Riverside the week of June 12 and left a message she was able to work again, but received no communication that work was available elsewhere. On June 30, she again told Riverside Staffing Service she was ready and able to work, but again no work was available. On July 6, 2006, she started work at Village Inn part-time.

#### 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 § 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 24.23(1) and 35) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness. 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 work-related but there was no medical restriction on her ability to work, claimant has established her ability to work as of June 12, 2006 by contacting Riverside. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

#### DECISION:

The representative's decision dated June 28, 2006, reference 03, is reversed. The claimant is able to work and available for work effective June 11, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

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