

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

TIMOTHY L SCHNEIDER  
1314 LARKFIELD CT  
MARSHALLTOWN IA 50158

GRINNELL BEVERAGE CO INC  
PO BOX 64  
GRINNELL IA 50112

Appeal Number: 04A-UI-12674-DT  
OC: 10/10/04 R: 02  
Claimant: Appellant (2/R)

**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:

Timothy L. Schneider (claimant) appealed a representative's November 22, 2004 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits in connection with his employment with Grinnell Beverage Company, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 20, 2004. The claimant participated in the hearing. The employer received the hearing notice and responded by calling the Appeals Section on December 8, 2004. The employer indicated that Tom Morgan would be available at the scheduled time for the hearing at telephone number (641) 236 4335, extension 103. However, when the administrative law judge called that number at the scheduled time for the hearing, Mr. Morgan was not available. Therefore, the employer did not participate in the hearing. Based on the

evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on January 15, 2000. He worked full time as a night loader in the employer's beverage distribution business. His last day of work was June 18, 2008. On June 20, 2004, the claimant was involved in a car accident while on personal time. He was on a leave of absence for several months. Approximately October 10, 2004, the claimant's doctor gave him a partial release to return to work with a 10-pound lifting restriction. The claimant informed the employer of this partial release and offered to return to work. The employer informed the claimant that he could not return to work until he had no restriction. Some testimony was offered suggesting that the claimant's employment was considered ended at that point, that the employer would be seeking to fill the position, but that the claimant could return and reapply once he was fully released. As of the date of the hearing, the claimant's restriction had been raised to a 25-pound lifting restriction, and there was a doctor's appointment scheduled for December 21, 2004 at which the claimant anticipated he would be fully released.

During the time the claimant had the 10-pound lifting restriction, there was work that he was physically able to do.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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.

To be found able to work, "[a]n 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." Sierra v. Employment Appeal Board, 508 N.W.2d 719, 721 (Iowa 1993); Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that as of October 10, 2004 he is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

An issue as to whether there had been a separation from employment arose during the hearing. This issue was not included in the notice of hearing for this case, and the case will be remanded for an investigation and preliminary determination on that issue. 871 IAC 26.14(5).

#### DECISION:

The representative's November 22, 2004 decision (reference 02) is reversed. The claimant is able to work and available for work effective October 10, 2004. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the separation issue.

ld/kjf