

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

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Appeal Number: 04A-UI-11329-SWT
OC: 09/12/04 R: 04
Claimant: Appellant (1)

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 to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated October 6, 2004, reference 02, that concluded he was not able to and available for work. A telephone hearing was held on November 12, 2004. The parties were properly notified about the hearing. The claimant participated in the hearing. Ann Norman participated in the hearing on behalf of the employer with a witness, Rose Daniels.

FINDINGS OF FACT:

The claimant worked full time for the employer as truck driver and warehouse worker from November 21, 2003, to September 10, 2004. Since September 10, 2004, the claimant has been off work with on a medical leave of absence due to a hernia. The claimant had surgery to repair the hernia during the week of November 8, 2004, and has not been released to turn to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work and available for work as required by Iowa Code section 96.4-3.

The unemployment insurance rules provide that an individual who is on a leave of absence is considered unavailable for work and ineligible for benefits. 871 IAC 24.22(2j). As a result, the claimant is presently considered unavailable for work.

The parties should be mindful of Iowa Code section 96.5-1-d, which provides that an individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. Iowa Code section 96.5-1-d. If the claimant offers to return to work after recovering from his injury and work is not available, the claimant can reapply for benefits at time.

DECISION:

The unemployment insurance decision dated October 6, 2004, reference 02, is affirmed. The claimant is ineligible for benefits effective September 12, 2004, and continuing until he reapplies for benefits and establishes that circumstances have changed and he is qualified for benefits.

saw/tjc