

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

EVERETT R GRAHAM
Claimant

APPEAL NO. 08A-UI-11602-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SLAFORD ENTERPRISES INC
Employer

OC: 10-19-08 R: 03
Claimant: Appellant (2)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the December 11, 2008, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on December 29, 2008. The claimant did participate. The employer did participate through Keith Mills, Production Manager.

ISSUE:

Was the claimant able to and available for work from October 19, 2008 through October 25, 2008?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: The claimant was sent home from work on October 21 because the employer believed that he had to be due to his exposure to whooping cough. The employer had been told by the Clarke County nurse that employees exposed to whooping cough could not be allowed to work. The claimant contacted his physician, who put the claimant on medicine but determined that the claimant did not have whooping cough. The claimant had been exposed to whooping cough when one of his daughters was diagnosed as suffering from it. The claimant's physician did not remove him from work or tell him to stay off work for any period of time while he took the medication. The claimant was told when he was sent home that he had to bring back a note from his doctor clearing him for work. The claimant took the prescribed medication and returned to work on October 27 and October 28 until he was laid off in a general layoff due to lack of work on October 29. When the claimant returned to work on October 27 he was not required to present a doctor's note before he was allowed to return to work.

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 from October 19 through October 25, 2008.

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".

The claimant was physically able to work and was taking the prescribed medication from his physician. His physician did not take him off of work due to his exposure to whooping cough. The claimant never was diagnosed as suffering from whooping cough. The claimant has established his ability to work. While the employer alleges that the county nurse determined that the claimant should be sent home, the claimant's physician did not believe that to be necessary. The administrative law judge is persuaded that the physician's opinion is more credible than that of a county nurse. Thus, the claimant was able to and available for work from October 19 through October 25. Accordingly, benefits are allowed.

DECISION:

The December 11, 2008, reference 02, decision is reversed. The claimant is able to work and available for work effective October 19, 2008. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw