

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES BRAGG
Claimant

APPEAL NO: 11A-UI-07510-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOB LANCASTER
Employer

**OC: 05-31-11
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 31, 2011, reference 03, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 5, 2011. The claimant participated in the hearing. Mark Lancaster, President, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant suffered a heart attack and was diagnosed with COPD February 26, 2011. He is no longer able to perform heavy, physical labor, such as driving a Haz-Mat truck. He is able to perform other work, however, and consequently is considered able and available for 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.

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.

While the claimant is no longer able to perform heavy, physical labor, he is able to perform other types of work effective June 1, 2011. Accordingly, he is able and available for work but has been disqualified for voluntarily leaving his job.

DECISION:

The May 31, 2011, reference 03, decision is reversed. The claimant is able to work and available for work effective June 1, 2011. Benefits are allowed unless the claimant has been disqualified because of his separation from employment.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

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