

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRYAN S HUFF
Claimant

APPEAL NO. 06A-UI-11658-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FEDLER CONSTRUCTION
Employer

OC: 02-05-06 R: 04
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 1, 2006, reference 02, decision that found the claimant able to and available for work. After due notice was issued, a hearing was held on December 20, 2006. The claimant did participate. The employer did participate through Robert B. Fedler, Owner.

ISSUE:

Is the claimant able to and available for work?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a carpenter full time beginning sometime in August 2002 through August 11, 2006, when he last worked. The claimant fell on concrete and hurt his shoulder in a non-work-related incident on August 12, 2006. He called Mr. Fedler and told him he would not be in to work the following Monday as he needed to seek medical treatment. The claimant went to his physician, who gave him a week of physical therapy and then released him to return to work light duty. The claimant called Mr. Fedler on August 28 and told him he could return to work light duty. Mr. Fedler told him that he could not allow him to work until he was able to work full duty without restrictions. Mr. Fedler instructed the claimant to provide him with a doctor's note that released him to work full duty and he would be put back to work at that time. Mr. Fedler told the claimant that he had to be able to do the job 100 percent in order to come back to work. The claimant has never returned to Mr. Fedler with a doctor's note indicating that he is able to work without restrictions and is ready to return to work. Mr. Fedler has work available for the claimant if he offers to return and establish that he has no work restrictions

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 effective November 30, 2006. .

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.

871 IAC 24.23(35) provides:

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

Employer is not obligated to accommodate a non-work-related medical condition. Inasmuch as the treating physician had released claimant to return to work without restriction effective November 30, 2006, the claimant is able to and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's decision dated December 1, 2006, reference 02, is affirmed. The claimant is able to work and available for work effective November 30, 2006. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw