

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTOPHER JUNG**  
Claimant

**APPEAL NO. 07A-UI-09295-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MIDWEST INDUSTRIES INC**  
Employer

**OC: 08/19/07 R: 01**  
**Claimant: Appellant (1)**

Section 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Kristopher Jung (claimant) appealed an unemployment insurance decision dated September 24, 2007, reference 01, which held that he was not eligible for unemployment insurance benefits because he was not available for work with Midwest Industries, Inc. (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 17, 2007. The claimant participated in the hearing. The employer participated through Jeff Ogren, Human Resources Manager. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

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

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was hired as a full-time machine operator on April 8, 2004. He sustained a non-work-related medical injury on June 4, 2007 and was taken off work by his treating physician. The claimant's physician released him without restrictions, but he was sent to the employer's physician before he could return to work. The employer's physician issued the claimant several work restrictions, which prevented him from returning to his regular job. The claimant resigned from his position effective September 14, 2007 and was released without restrictions on September 15, 2007. The separation issues are being addressed in a separate decision.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

Iowa Code § 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 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). Due to non-work-related medical restrictions, he was unable to work in his position from June 4, 2007 through September 15, 2007. The claimant does not meet the availability requirements of the law from week ending June 9, 2007 through September 15, 2007, and is not entitled to benefits during that time.

**DECISION:**

The unemployment insurance decision dated September 24, 2007, reference 01, is affirmed. Benefits are denied from June 9, 2007 through September 15, 2007.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw