

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

EDWIN L QUICK
603 E 12TH ST S
NEWTON IA 50208-3904

IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 06A-UI-02699-DT
OC: 01/08/06 R: 02
Claimant: Appellant (4)

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 and Available

STATEMENT OF THE CASE:

Edwin L. Quick (claimant) appealed a representative's February 9, 2006 decision (reference 03) that concluded he was not qualified to receive unemployment insurance benefits because of not being able and available for work. After a hearing notice was mailed to the claimant's last-known address of record, a telephone hearing was held on March 28, 2006. The claimant participated in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant was in an in-patient substance abuse treatment program for about one week beginning on or about December 23, 2005. After release from the in-patient program, he was in an "intensive out-patient" program for approximately nine weeks, from which he was released on or about March 3, 2006. During the "intensive out-patient" program, the claimant was required to be physically present at the treatment facility daily from approximately 9:00 a.m. through at least 3:00 p.m., effectively precluding the claimant from being able to be employed until his release from the program.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is currently eligible for unemployment insurance benefits by being able and available for employment.

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 medical practitioner and has not been released as being able to work.

The claimant was not able and available for work until his release from the treatment program. After that release, he would be able and available for work effective March 5, 2006, if he was otherwise eligible. As determined in the concurrently issued decision in 06A-UI-02698-DT, he is not yet otherwise eligible.

DECISION:

The representative's February 9, 2006 decision (reference 03) is modified in favor of the claimant. The claimant was not able to work and available for work effective January 8, 2006, but became able and available effective March 5, 2006. After that date, the claimant would be qualified to receive unemployment insurance benefits, if he were otherwise eligible.

ld/kkf