

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

PHILLIP J FRASER
612 - 1ST ST SE
BELMOND IA 50421

ELECTROLUX HOME PRODUCTS INC
FRIGIDAIRE
C/O TALX EMPLOYER SVCS
PO BOX 1160
COLUMBUS OH 43216-1160

Appeal Number: 06A-UI-03430-SWT
OC: 05/01/05 R: 01
Claimant: Appellant (2)

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:

The claimant appealed an unemployment insurance decision dated March 13, 2006, reference 02, that concluded the claimant was unable to work. A telephone hearing was held on April 12, 2006. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer from May 6, 1991, to November 3, 2004. In July 2004 he sustained a work-related shoulder injury. He continued to work until November when his doctor excused him from working. The employer believed that the injury was not work-related and, therefore, workers' compensation coverage was denied. The claimant's doctor has diagnosed his medical condition as related to his work for the employer. He has offered to return to work

for the employer and presented a medical release stating that he is able to work with the restrictions of no work at or above shoulder level, no repetitive shoulder motions, routine lifting of 5 pounds, and rare lifting of over 20 pounds. The employer will not permit him to return to work until he is able to perform his former job without restrictions.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 1, 2005, after he had exhausted all paid leave available from the employer. The claimant was required to reopen his claim effective December 4, 2005. As of that date, his restrictions were the same as indicated above. He is unable to perform his former job, but he is able to perform other work within his restrictions, which could include work as a salesperson. The claimant has been actively looking for work within his restrictions.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The law does not require that the claimant be able to perform his usual job. The law only requires that he be physically and mentally able to engage in some work activity that is engaged in by others as a means of livelihood. See 871 IAC 24.22(1). Although the claimant has restrictions, there are jobs in the labor market that the claimant is able to perform. He is deemed able to and available for work.

DECISION:

The unemployment insurance decision dated March 13, 2006, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

saw/kkf