

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHRISTOPHER M DEMEYER
Claimant

APPEAL NO. 07A-UI-04152-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARE INITIATIVES
Employer

OC: 03-18-07 R: 02
Claimant: Appellant (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 18, 2007, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on May 8, 2007. The claimant did participate. The employer did participate through Murt Steffen, Administrator and was represented by Mike Sloan of TALX UC eXpress.

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: The claimant had work restrictions of no lifting over 15 pounds and no repetitive bending or lifting due to a non-work-related injury. The claimant's work restrictions were lifted on March 27, 2007. The employer's policy provides that they do not accommodate non-work-related work restrictions.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work from March 19, 2007 through March 27, 2007.

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.

Inasmuch as the injury was not work-related and the treating physician did not release the claimant to return to work until March 27, 2007, the claimant was not able to and available for work from March 19, 2007 through March 27, 2007. Benefits are withheld from March 19 through March 27, when the claimant received a full release to return to work.

DECISION:

The representative's decision dated April 18, 2007, reference 01, is affirmed. The claimant is not able to work and available for work effective March 19, 2007 through March 27, 2007. Benefits are withheld from March 19 through March 27, 2007.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css