

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL D OSBORN
Claimant

APPEAL NO. 06A-UI-09597-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MORRISON TRUCKING
Employer

OC: 05-21-06 R: 03
Claimant: Appellant (2)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the September 21, 2006, reference 03, decision that found the claimant not able to and available for work and thus not eligible for unemployment insurance benefits. After due notice was issued, a hearing was held on October 17, 2006. The claimant did participate. The employer did participate through (representative) Randall Wayne Morrison, Owner and Curt Morrison, Safety Director. Employer's Exhibit One was entered and received.

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 hospitalized for a brief two or three day period to have throat surgery to remove a cancerous growth. He has no work restrictions and is physically able to and available for work now.

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.

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".

The claimant was only in the hospital two or three days and he had no work restrictions that would impede him from working. The claimant is physically able to perform work like truck driving. Accordingly, benefits are allowed.

DECISION:

The September 21, 2006, reference 03, decision is reversed. The claimant is able to work and available for work effective September 17, 2006. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/cs