

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

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Appeal Number: 06A-UI-03505-SWT
OC: 10/16/05 R: 02
Claimant: Respondent (1)

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 to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 14, 2006, reference 04, that concluded the claimant was medically able to work and eligible for benefits effective February 13, 2006. A telephone hearing was held on April 17, 2006. The claimant participated in the hearing with his representative, Jay Roberts. Mike Pargeon participated on behalf of the employer with a witness, Dawn Kennedy.

FINDINGS OF FACT:

The claimant worked as a salvage yard worker for the employer April 4, 2005, to July 11, 2005. After July 11, 2005, the claimant was off work due to problems with a hernia. The claimant had surgery to repair the hernia on November 2, 2005.

The claimant was released to return to work with a 25-pound weight restriction by his doctor in January 2006. He offered to return to work on February 13, 2006, but the employer did not have any work available within the claimant's restrictions.

As of February 13, 2006, the claimant was not able to perform the previous job that he held with the employer, but he was able to work as a janitor; a store clerk, stocking shelves; and as a gas station attendant, despite his restrictions. The claimant has been actively looking for other work.

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 unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires heavy lifting. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated March 14, 2006, reference 04, is affirmed. The claimant is qualified to receive unemployment insurance benefits effective February 13, 2006, if he is otherwise eligible.

saw/kkf