

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACEY L CLUBINE
Claimant

APPEAL NO. 08A-UI-05108-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**COMPONETS MFG GROUP INC ETAL
NCM LIMITED PARTNERSHIP**
Employer

**OC: 04/06/08 R: 02
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated May 19, 2008, reference 01, which held claimant not able and available for work. After due notice, a telephone conference hearing was scheduled for and held on June 11, 2008. Claimant participated personally and was represented by Bob Rush, Attorney at Law. Employer participated by Dave Black burn, Manufacturing Manager.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant went off work due to an injury August 17, 2007. Claimant properly informed the employer and kept the employer informed of her ongoing medical care. Claimant had a surgery for the injury May 30, 2008. Claimant has light duty restrictions limiting pushing and pulling, bend, crawl and lifting more than 20 pounds. Claimant has not been discharged from medical care. The injury is work related based on an opinion of Greg Randolph, PA. Claimant is still in a healing period without permanent work restrictions. Claimant is still an employee.

REASONING AND CONCLUSIONS OF LAW:

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 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

Inasmuch as the treating physician has not released the claimant to return to work with permanent work restrictions, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a medical release to return to work with no restrictions or with permanent work restriction. Claimant is still on medical leave and under ongoing medical care. She is not able and available for work effective April 6, 2008.

DECISION:

The decision of the representative dated May 19 2008, reference 01, is affirmed. Claimant is not eligible to receive unemployment insurance benefits, effective April 6, 2008, until claimant proves that she is able and available for work.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/pjs