

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS**

Division of Administrative Hearings  
Lucas State Office Building  
Des Moines, Iowa 50319

DECISION OF THE ADMINISTRATIVE LAW JUDGE

**RONNIE G CALHOUN  
606 THIRD STREET  
ANITA IA 50020**

**INVESTIGATIONS AND RECOVERY  
IOWA WORKFORCE DEVELOPMENT  
1000 EAST GRAND AVENUE  
DES MOINES IA 50319-0209**

DAN ANDERSON, IWD

**Appeal Number: 05-IWDUI-095**  
**OC: 07/11/04**  
**Claimant: Appellant (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 the department. 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.

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(Administrative Law Judge)

**JULY 15, 2005**

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(Decision Dated & Mailed)

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Section 96.4-3 - Able and Available  
871 IAC 24.22 – Benefit Eligibility Conditions  
871 IAC 24.23(1),(2) – Availability Disqualification/Illness and Hospitalization

STATEMENT OF THE CASE:

The claimant filed an appeal from a Iowa Workforce Development Department decision dated April 15, 2005, reference 02, which held the claimant ineligible for benefits effective March 6, 2005, because the claimant was unable to perform work due to illness.

The hearing was held pursuant to due notice on July 11, 2005, by telephone conference call. The claimant did not participate. John Doidge, Investigator, participated on behalf of Iowa Workforce Development, Investigation & Recovery.

#### FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds that: The claimant filed a claim for unemployment insurance benefits effective July 11, 2004. When the claimant called-in to claim for benefits as to the weeks ending March 12, and March 19, 2005, he reported that he was not able to work.

A department representative called and interviewed the claimant on April 14, 2005 regarding his report that he was not able to work. The representative recorded a claimant statement that he went into the hospital on March 9, 2005, was released on April 11, but he continued under doctor's care and not released to return to work.

The claimant failed to respond to the hearing notice.

#### REASONING AND CONCLUSIONS OF LAW:

The issue is whether the claimant is able 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".

**871 IAC 24.22(96) 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.

(2) *Available for work.*

**871 IAC 24.23 Availability disqualifications.** The following are reasons for a claimant being disqualified for being unavailable for work.

**24.23(1)** An individual who is ill and not presently able to perform work due to illness.

**24.23(2)** An individual presently in the hospital is deemed to meet the availability requirements of Iowa Code section 96.4-3.

The administrative law judge concludes that the claimant is not available for work due to an illness and hospitalization, such that he is not eligible for unemployment benefits effective March 6, 2005 pursuant to the law sections cited above. When the claimant's doctor has issued a release to return to work, he may remove the disqualification by presenting the release to a representative at his local workforce center.

**DECISION:**

The decision of the representative dated April 15, 2005, reference 02, is **AFFIRMED**. The claimant is **NOT** eligible for benefits effective March 6, 2005 as he is not able and available for work due to a hospitalization and illness.

rls