

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JONATHAN L GRAY
Claimant

APPEAL NO. 10A-UI-00723-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**MANPOWER INTERNATIONAL INC
MANPOWER TEMPORARY SERVICES**
Employer

**OC: 12-28-08
Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 7, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on February 15, 2010. The claimant did participate. The employer did participate through Heidi Pringle, Senior Staffing Specialist.

ISSUE:

Was the claimant able to and available for work effective November 15, 2009 through January 5, 2010?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was assigned to work at NSK by the employer. On November 15 in a non-work-related injury the claimant broke his elbow necessitating surgery on November 24 to repair the damage. The claimant's treating surgeon imposed work restrictions upon him that basically included no use of his left arm until January 5, 2010. The claimant was no longer able to perform his job duties at NSK as he needed to be able to use both hands to do so. The employer chose not to accommodate the claimant's non-work-related injury restrictions. When the claimant was released from his work restrictions, he was given another work assignment.

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.

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, without work restrictions until January 5, 2010 the claimant has not established ability to work. The employer is not required to provide light duty or to accommodate work restrictions an employee has because of a non-work-related injury. Benefits are withheld until such time as the claimant obtains a full medical release to return to work without any work restrictions.

DECISION:

The representative's decision dated January 7, 2010, reference 02, is affirmed. The claimant is not able to work and available for work effective November 15, 2009. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs