

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**NATHAN S BERNHARDT**  
Claimant

**APPEAL NO. 07A-UI-05286-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WEST LIBERTY FOODS LLC**  
Employer

**OC: 04/15/07 R: 04  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 18, 2007, reference 01, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 11, 2007. Claimant participated. Employer participated through Ann Hocke.

**ISSUE:**

The issue is whether claimant is able to and available for work.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: On April 15, claimant made a respiratory distress complaint to employer's nurse who sent him to a doctor to get a release to return to work. He first saw Veteran's Medical Center Dr. Joshi in Bettendorf, Iowa, on April 14 who told him to avoid the smoke-filled room (where the meatballs are fried) but that he could go back to work. This advice was provided to employer on April 16. Employer sent him to a "fit for duty" examination with Tracy Abbott, Nurse Practitioner on April 27 who said that he should avoid the smoke-filled room but he could work. On May 4, he saw Abbott again who gave him a full release to return to work without restrictions. He returned to work on Tuesday, May 8. Employer paid claimant vacation pay for the one week ending April 21, 2007 but recovered the vacation pay for the week ending April 28, 2007.

**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 § 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(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

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

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 work-related and the treating physician has released the claimant to return to work, even with restrictions, the claimant has established his ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

**DECISION:**

The representative's decision dated May 18, 2007, reference 01, is reversed. The claimant is able to work and available for work effective April 15, 2007. Benefits are allowed, provided the claimant is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css