

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOHN M BURGOYNE**  
Claimant

**APPEAL NO. 12A-UI-02914-VST**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/06/11  
Claimant: Appellant(1R)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated March 16, 2012, reference 05, which held that the claimant was not eligible to receive unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on April 6, 2012. Claimant participated. This case was heard in conjunction with 12A-UI-02913-VST.

**ISSUE:**

Whether the claimant is able and available for work as of November 6, 2011.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant sustained a work-related injury on July 8, 2011. He was initially released to return to work sometime in August 2011 and did work for approximately one month for Lamberti Concrete. In early October 2011, the claimant's symptoms due to his work-related injury increased and he was forced to stop working. The claimant has been off work since October 2011, and was released on March 29, 2012. The claimant established his claim for unemployment insurance benefits on November 6, 2011. He was unable to work at that time and was receiving workers' compensation benefits.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The evidence in this case established that the claimant was unable to work due to an injury he sustained at work on July 8, 2011, at the time he established his unemployment insurance claim on November 6, 2011. The claimant has only been released to return to work as of March 29, 2012. The claimant is therefore disqualified from receiving benefits as of November 6, 2011, since he is not able and available for work. This matter is remanded to the claims section for a determination of able and available as of March 29, 2012.

**DECISION:**

The decision of the representative dated March 16, 2012, reference 05, is affirmed. The claimant was not able and available for work on November 6, 2011. This matter is remanded to the claims section to determine if the claimant is able and available for work as of March 29, 2012.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

vls/pjs