

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

ELYCE E RINEY	:	
	:	
Claimant,	:	HEARING NUMBER: 08B-UI-08515
	:	
and	:	
	:	EMPLOYMENT APPEAL BOARD
	:	DECISION
PRECISION RESISTIVE PRODUCTS INC	:	
	:	
Employer.	:	

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4(3)

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member concurring, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

Elizabeth L. Seiser

Monique F. Kuester

AMG/fnv

CONCURRING OPINION OF JOHN A. PENO:

I agree with my fellow board members that the administrative law judge's decision should be affirmed; however, I would also comment that the claimant needn't obtain an unconditional release to return to work in order to qualify for unemployment benefits.

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:

The individual is able to work, is available for work, and is earnestly and actively seeking work....

In addition, the law also provides that a person "... must be physically able and available for work, not necessarily in the individual's customary occupation, but in some *reasonably suitable, comparable, gainful, full-time endeavor...* that is generally available in the labor market..." (Emphasis added.) See, 871 IAC 24.22(1) b."

In the instant case, however, that the claimant was off work due to a nonwork-related injury and returned to work with a one-pound weight restriction. The claimant's weight restriction on her left arm disqualified her from employment in the general labor market. Once she obtains a release which would allow her to work in the general labor market, she can may become eligible for benefits.

John A. Peno

AMG/fnv