

IOWA DEPARTMENT OF INSPECTIONS & APPEALS
Division of Administrative Hearings
Wallace State Office Building
Des Moines, Iowa 50319

Appeal Number: 08-IWDUI-107
OC: 05/11/08
Claimant: Appellant (1)

DECISION OF THE ADMINISTRATIVE LAW JUDGE

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.

MICHAEL W KLEIN
1508 ARLINGTON AVENUE #2
DES MOINES IA 50314-3219

STATE CLEARLY

IOWA WORKFORCE DEVELOPMENT
QUALITY CONTROL
JULI PUTZIER AUDITOR
1000 EAST GRAND AVENUE
DES MOINES IA 50319-0209

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.

Michele Andre, IWD
Dan Anderson, IWD

(Administrative Law Judge)

September 12, 2008

(Decision Dated & Mailed)

Section 96.4-3 - Able and Available
871 IAC 24.22 – Benefit Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from an Iowa Workforce Development Department decision dated July 24, 2008, reference 01, which held the claimant ineligible for benefits from May 11, 2008 through June 21, 2008, because the he was unable to perform work due to a physician report.

The hearing was held pursuant to due notice on September 8, 2008, by telephone conference call. The claimant participated. Juli Putzier, Auditor, participated on behalf of Iowa Workforce Development, Quality Control. Claimant Exhibit A was received as evidence into the hearing.

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 May 11, 2008. The department randomly selected the claimant's claim for review.

Quality control assigned Auditor Putzier to audit the claimant's claim, and she interviewed the claimant about his reason for filing his claim. Putzier learned the claimant last worked as a carpenter for Heartland Finishes on April 25, 2008, and that he was off work due to flu like illness. The claimant did not file any claim for benefits while being off work due to having the flu.

Later, Putzier learned that the claimant was on medical leave based on advice from his physician due to a non-job related medical condition. Putzier interviewed the claimant who confirmed that he experienced some rectal bleeding, and he was later treated for it during a colon proceeding.

Putzier received a medical report from the claimant's physician dated July 22, 2008 that diagnosed rectal bleeding, secondary to diverticulitis. The report confirmed that the medical condition was not work related, and that the physician reported the claimant was not to work from April 25, 2008 to June 23, 2008.

The claimant advised his supervisor about the rectal bleeding problem and treatment with a requirement that he needed sanitary conditions to report to work. The employer was unable to provide the claimant with the work conditions required, and they had no other work available for him to perform given the conditions. When the claimant was able to return without restrictions to do his regular job as a carpenter, he did so on June 23, 2008.

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.

- (1) An individual who is ill and presently not able to perform work due to illness.
- (6) If an individual has a medical report on file submitted by a physician, stating that such individual is not able to work.

The administrative law judge concludes that the claimant was not able and available to perform work from May 11, 2008 through June 21, 2008 due to a non-job related illness based on a medical report from his physician pursuant to the law sections cited above. The medical report offered as evidence by the claimant establishes that he was ineligible for benefits due to a non-job related illness.

DECISION:

The decision of the representative dated July 24, 2008, reference 01, is **AFFIRMED**. The claimant is ineligible for benefits from May 11, 2008 to June 21, 2008, as he was unable to perform work due to advice from his physician based on a non-job related illness.

rls