

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**LEANNE R SABO  
1134 W 8<sup>TH</sup> ST  
WATERLOO IA 50702**

**CITY OF CEDAR FALLS MNCP UTILITIES  
ATTN DIRECTOR  
PO BOX 769  
CEDAR FALLS IA 50613-0769**

**KEVIN R ROGERS  
SWISHER & COHRT  
PO BOX 1200  
528 W 4<sup>TH</sup> ST  
WATERLOO IA 50704-1200**

**Appeal Number: 06A-UI-05703-H2T  
OC: 04-30-06 R: 03  
Claimant: Appellant (2)**

**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.

STATE CLEARLY

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 Workforce Development. 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.4-3 - Able and Available Section  
Section 96.5-1 - Voluntary Leaving - Layoff

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 26, 2006, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on June 20, 2006. The claimant did participate and was represented by Kevin Rogers, Attorney at Law. The employer did participate through (representative) Bob Dieter, Director of Employee Services; Linda Mills, Human Resources Supervisor; and Roland Ford, Health and Safety Specialist. Claimant's Exhibits One through Three were entered and received into the record.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a meter reader full time beginning in April 11, 2002 through April 20,

2006, when she was placed on medical leave. Currently the claimant is still employed although the employer has no work available for her that complies with her work restrictions. The claimant was injured in a work-related fall on January 3, 2005, when she slipped on some ice and twisted her knee. The claimant has since received medical treatment including surgery for her injury. She has sustained additional work-related knee injuries since January 3, 2005. While the employer disputes the claimant's injury is work-related, Mr. Ford's testimony clearly indicates that falls such as the one sustained by the claimant are a common occurrence among meter readers and an expected hazard of the job. The employer offers no evidence to support its contention that the claimant's injury did not occur at work.

As a result of her work-related injury, the claimant now has work restrictions that include: no lifting over 20 pounds, no walking on uneven terrain, no standing for long periods of time, no squatting, kneeling, crawling or climbing of ladders and no repetitive trunk rotation. When the employer determined that there was no work available that would comply with the claimant's work restrictions, the claimant was placed on medical leave. The claimant had been given twelve weeks to recover, if she is not able to return to work without restrictions or with restrictions that allow her to perform as a meter reader, she will be discharged.

The claimant is able to work at seated positions such as a data entry clerk or a receptionist. She is currently seeking work that complies with her work restrictions.

#### 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 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.

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

For the reasons that follow, the administrative law judge concludes the claimant was laid off due to a lack of work.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The claimant is still employed, although she is currently without work, as the employer will not accommodate her work restrictions. Therefore, the separation was attributable to a lack of work by the employer. Benefits are allowed.

DECISION:

The May 26, 2006, reference 01, decision is reversed. The claimant is able to work and available for work effective April 20, 2006. The claimant was laid off due to a lack of work. Benefits are allowed, provided the claimant is otherwise eligible.

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