

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD H FINDLING
Claimant

APPEAL NO. 08A-UI-05123-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CARGILL MEAT SOLUTIONS
CORPORATION**
Employer

OC: 07/01/08 R: 03
Claimant: Appellant (2)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 23, 2008, reference 05, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on June 25, 2008. Claimant participated. Employer did not participate.

ISSUE:

The issue is whether claimant is able to and available for work effective February 24, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was separated from his employment with Cargill upon the advice of his physician because his job duties caused his hands and forearms to swell and become painful. Anjan Bhattacharyya, M.D. opined that claimant is unable to work a job lifting or manipulating instruments using his hands but is able to perform supervisory or other work that does not involve using his hands and has been able to do so since February 2008. (Claimant's Exhibit A) He is able to drive and has been applying for work driving a fork lift, working in a convenience store, and supervisory work. Claimant did not file claims for benefits for the period he was in the hospital from June 4 through June 18, 2008. The administrative law judge suggests he seek a referral from his doctor to a vocational rehabilitation counselor beyond assistance he is receiving from the Iowa Workforce Development (IWD) local office.

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 24.22(1)a, (2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

While claimant is significantly restricted from duties he can perform using his hands, he is able to perform other tasks such as driving a fork lift. Since his treating physician has opined he is able to work since February 2008, claimant is considered able to work and benefits are allowed.

DECISION:

The May 23, 2008, reference 05, decision is reversed. The claimant is able to work and available for work effective February 24, 2008. Benefits are allowed.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs