

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES A CUMMINS
Claimant

APPEAL NO. 11A-UI-05264-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 03/20/11
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a representative's decision dated April 11, 2011, reference 02, which held the claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on May 16, 2011. The claimant participated. This case was heard in conjunction with 11A-UI-05263-VST.

ISSUE:

Whether the claimant was able and available for work.

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 was terminated from his employment on March 4, 2011, for excessive absenteeism. The claimant had sustained a work-related injury to his left foot on July 8, 2009. The claimant eventually underwent surgery for this injury on September 7, 2010. When the claimant was initially returned to work, he had restrictions that limited him to sedentary or light work. The employer provided light duty to the claimant.

The claimant was released to return to work without restrictions on March 17, 2011. The claimant did not establish a claim for benefits until March 20, 2011.

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 at the time the claimant established his claim for benefits on March 20, 2011, he was released to return to work without restrictions. The release to return to work was on March 17, 2011. The claimant is therefore able and available for work as of March 20, 2011.

DECISION:

The representative's decision dated April 11, 2011, reference 02, is reversed. The claimant is able and available for work as of March 20, 2011.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/kjw