

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RICHARD D BOYD
Claimant

APPEAL NO. 10A-UI-16035-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEXTER FOUNDRY INC
Employer

**OC: 01-31-10
Claimant: Respondent (1)**

Iowa Code § 96.5(2)a – Discharge/Misconduct
Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 16, 2010, reference 03, decision that allowed benefits. After due notice was issued, a hearing was held on January 11, 2011. The claimant did participate. The employer did participate through (representative) Kathy Baker, Human Resources Assistant and Greg Hanshaw, Human Resources Manger. Claimant's exhibit A was entered and received into the record.

ISSUES:

Was the claimant discharged due to job related misconduct?

Is the clamant able to and available for work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a mill room grinder on the third shift full time beginning November 15, 2004 through date of hearing as he remains employed. The claimant's treating surgeon, Gregory K. Ivins, M.D. has offered the opinion that the surgery the claimant had on his right pronator teres nerve was due to a work-related injury. The employer is disputing that the claimant's injury was work related. Only the claimant offered a medical opinion that his injury was work related. As a result of the claimant's injury and subsequent surgery he has work restrictions that prohibit him from lifting over fifty pounds. The employer will not accommodate his work restrictions. The claimant is able to work within his work restrictions. The claimant offered to return to work on September 7 or 8, after Dr. Ivins released him with the restrictions. The employer has not put him back to work.

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 24.23(1) provides:

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.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions the claimant has established his ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated November 16, 2010 (reference 03) is affirmed. The claimant is able to work and available for work effective September 12, 2010. Benefits are allowed, provided he is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs