

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

Appeal Number: 05A-UCFE-00027-SWT
OC: 06/12/05 R: 01
Claimant: Appellant (1)

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.**

ROBERT J ROCK
30 LAKE CT
COUNCIL BLUFFS IA 51501

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.

HARVEYS IOWA MANAGEMENT CO INC
HARRAHS COUNCIL BLUFFS CASINO
1 HARVEYS BLVD
COUNCIL BLUFFS IA 51501

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated August 25, 2005, reference 06, that concluded he was not able and available to work. A telephone hearing was held on September 15, 2004. The claimant participated in the hearing. Leigh Bell and Carrie Buckley participated on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the United States Postal Services from December 1988 to June 9, 2005. The claimant filed a new claim for unemployment insurance benefits with an effective date of June 13, 2005. His base period was from January 1, 2004, to December 31, 2004. Up

until November 2004, the claimant was working full time as a letter carrier for the United States Postal Service. In November 2004, the claimant had surgery on his knee, and after he returned to work he was unable to work full time due to restrictions on his ability to stand and walk.

At least as of August 7, 2005, the claimant has been seeking part-time work of no more than 25 hours per week because of his medical restrictions. The claimant has been determined disabled due his medical problems under the Social Security Disability program.

REASONING AND CONCLUSIONS OF LAW:

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code section 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job that is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

The rules provide that a claimant must be able to work to the same degree and to the same extent as when his wages credits were earned. 871 IAC 24.22(2)(f). Since the claimant was only willing and able to work 25 hours per week or less and the wage credits were earned in full-time work, he is not considered available to work under the unemployment insurance law.

DECISION:

The unemployment insurance decision dated August 25, 2005, reference 06, is affirmed. The claimant is not eligible to receive unemployment insurance benefits effective August 7, 2005. This disqualification will remain in effect until the claimant reapplies for benefits and establishes that he is seeking and is available for full time work.

saw/kjw