

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

JOHN D CLEAVER  
529 W VAN BUREN ST  
CENTERVILLE IA 52544

CURWOOD INC  
24<sup>TH</sup> & O'NEAL ST  
CENTERVILLE IA 52544

Appeal Number: 05A-UI-02449-CT  
OC: 02/06/05 R: 03  
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, 4<sup>th</sup> 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

STATEMENT OF THE CASE:

John Cleaver filed an appeal from a representative's decision dated March 9, 2005, reference 01, which denied benefits on a finding that he was not able to work. After due notice was issued, a hearing was held by telephone on March 28, 2005. Mr. Cleaver participated personally. The employer participated by Jackie Bresnahan, Human Resources Manager. Exhibits One through Five were admitted on the employer's behalf.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all the evidence in the record, the administrative law judge finds: Mr. Cleaver's last period of employment with Curwood, Inc.

began on June 5, 1997. He was employed full time as a machine operator and last performed services on September 6, 2004. He suffers from degenerative disc disease, a condition that is not work-related. As of September 10, 2004, he was limited to sedentary work with restrictions on the amount he could lift as well as limitations on his ability to push and pull items. The employer did not have work available within those restrictions. Therefore, Mr. Cleaver was maintained on short-term disability benefits.

On September 29, 2004, Mr. Cleaver's doctor provided the employer with an updated report, which indicated that he was not able to work at that time and would be unable to do so for an indefinite period of time. The form submitted gave the doctor the option of stating whether Mr. Cleaver could perform sedentary work, light work, light/medium work, medium work, light heavy work, heavy work, or dry work. The treating physician did not check any of the boxes mentioned above. When Mr. Cleaver exhausted his entitlement to Family and Medical Leave Act benefits, he made application for long-term disability benefits. Long-term benefits were denied. On February 12, 2005, Mr. Cleaver exhausted his short-term disability benefits and, therefore, pursuant to the employer's policy, was removed from the employment effective February 13, 2005.

#### REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether Mr. Cleaver is able to work as required by Iowa Code section 96.4(3). The most recent medical evidence in the record is the statement of September 29, 2004. At that time, the doctor indicated that Mr. Cleaver would be unable to work for an indefinite period of time. It is noteworthy that the treating physician did not select any of the seven boxes provided to indicate that there was some work activity Mr. Cleaver could perform. Absent some indication that he could perform some type of work, the administrative law judge must conclude that he is not able to perform any work and has been unable to do so since September 29, 2004.

Mr. Cleaver had the burden of proving that he satisfied the availability requirements of the law. Given the lack of medical evidence after September 29, 2004, the administrative law judge must conclude that he has failed to establish that he is able to work. The fact that he feels there is work he can do does not override the doctor's recommendations regarding work activity. For the reasons cited herein, benefits are denied.

#### DECISION:

The representative's decision dated March 9, 2005, reference 01, is hereby affirmed. Mr. Cleaver is denied job insurance benefits effective February 6, 2005 as he is not able to work. Benefits are withheld until such time as he provides satisfactory proof to his local office that he is able to work, provided he satisfies all other conditions of eligibility.

cfc/sc