

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

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Appeal Number: 05A-UI-02470-SWT
OC: 12/26/04 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, 4th 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.

(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 February 25, 2005, reference 02, that concluded he was not able to and available for work effective February 20, 2005. A telephone hearing was held on March 28, 2005. The parties were properly notified about the hearing. The claimant participated in the hearing. Don Van Den Top participated in the hearing on behalf of the employer with witnesses, Dan Dykstra, Chuck Emery, and Stephanie Regnerus. The reopened hearing was held on May 19, 2005, on the issue of whether the employer was a “successor-in-interest” and whether the claimant was entitled to leave under the Family and Medical Leave Act. Prior to the hearing, the employer's attorney, Margaret Prah, submitted a letter stating that the employer had decided to withdraw its objection to the claimant receiving unemployment insurance benefits. The claimant participated in the reopened hearing. The employer did not participate in the reopened hearing. Based on the evidence, the arguments of the parties, and the law, the following findings of fact, reasoning and conclusions of law, and decision are entered.

FINDINGS OF FACT:

The claimant left his employment as a machine operator for the employer due to medical reasons on February 3, 2005. The claimant had rotator cuff surgery on February 21, 2005. The claimant remained able to and available for work through February 19, 2005. After February 19, 2005, the claimant was not able to work.

The claimant filed an new claim for unemployment insurance benefits with an effective date of February 6, 2005. He filed weekly claims for the weeks ending February 12 and 19, 2005, and then stopped filing claims because he had not been released to return to work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3.

The evidence establishes that the claimant was unable to work effective February 20, 2005. Benefits are denied as of that day. If the claimant believes that his circumstances have changed, he is required to reapply for benefits and present medical evidence establishing that he is again able to and available for work.

DECISION:

The unemployment insurance decision dated February 25, 2005, reference 02, is affirmed. The claimant is ineligible to receive unemployment insurance benefits as of February 20, 2005. The claimant is required to reapply for benefits and present medical evidence establishing his ability to work in order to receive benefits in the future.

saw/pjs