

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID L SETTLES**

Claimant

**APPEAL NO: 10A-UI-03801-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 01/31/10**

**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

David Settles (claimant) appealed a representative's March 1, 2010 decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to work. After hearing notices were mailed to the claimant's last-known address of record, a telephone hearing was scheduled for April 10, 2010. The claimant participated personally.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant had surgery on January 7, 2010. He was restricted from working from January 7 through 22, 2010. His physician released him to return to work with restrictions on January 23, 2010. He filed for unemployment insurance benefits with an effective date of January 31, 2010.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is able and available for work.

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.

When an employee is ill and unable to perform work due to that illness he is considered to be unavailable for work. The claimant was released to return to work with restrictions by his

physician on January 23, 2010. He is considered to be available for work because his physician stated he was able and available for work. The claimant is not disqualified from receiving unemployment insurance benefits on January 23, 2010.

**DECISION:**

The representative's March 1, 2010 decision (reference 01) is reversed. The claimant is not disqualified from receiving unemployment insurance benefits because he was available for work on January 23, 2010.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/css