

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDA HARNISH**  
Claimant

**APPEAL NO. 07A-UI-09227-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY SERVICES INC**  
Employer

**OC: 07/01/07 R: 02  
Claimant: Appellant (5)**

Section 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Linda Harnish (claimant) appealed an unemployment insurance decision dated September 27, 2007, reference 02, which held that she was not eligible for unemployment insurance benefits because she was not able to work due to illness. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 16, 2007. The claimant participated in the hearing. The employer participated through Kimberly Garrard, Staffing Supervisor. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant is able and available to 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 was hired part-time with the employer on December 15, 2006 and she was placed at Kraft as a machine operator working 30 hours per week. She sustained a non-work-related injury to her elbow on August 6, 2007. The claimant was released to full duty but her wound had to be bandaged and covered. She was therefore prohibited from working in the food production area due to health and safety reasons. The claimant had surgery on her elbow and was placed on light duty from August 24, 2007 through September 10, 2007, after which she was released from all restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that she is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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.

The claimant has the burden of proof in establishing her ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). She was unable to work for this employer in her regular position from August 6, 2007 through September 10, 2007 due to a non-work-related injury. The claimant does not meet the availability requirements of the law for the five-week period ending September 8, 2007 and is not entitled to benefits during that time.

**DECISION:**

The unemployment insurance decision dated September 27, 2007, reference 02, is modified with no effect. Benefits are denied from August 11, 2007 through September 8, 2007.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

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