

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JAMES F RAMLER**  
Claimant

**APPEAL NO. 08A-UI-02687-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FALEY ENTERPRISES INC**  
Employer

**OC: 02-10-08 R: 04**  
**Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the March 10, 2008, reference 01, decision that denied benefits. After due notice was issued, a hearing was held on April 2, 2008. The claimant did participate and was represented by Emily Reiners, Attorney at Law. The employer did participate through T. J. Faley, President.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a truck driver full time beginning May 2, 2005 through date of hearing.

The claimant went on a leave of absence to deal with a non-work-related illness on December 6, 2007. Prior to going on his leave the claimant was told by his supervisor that in order to return to work he would need to have a work release from his physician with no work restrictions. The claimant's job required that he lift over fifty pounds often. The claimant was released to return to work by his physician for February 12, 2008 with a fifty-pound work restriction. The claimant went to the employer who told him that he could not return to work until he had a full release from his physician. The claimant is still considered to be an employee and will be put back to his same job once he receives a release from his doctor to do so.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work

Iowa Code section 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 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the injury or illness and it's necessary surgery was not work-related and the treating physician has not released the claimant to return to work without restrictions, the claimant has not established ability to work for this employer. The claimant must be released to return to work without restrictions. The claimant was on an approved leave of absence, but he must be able to return without restrictions after the conclusion of the leave in order to establish his availability for work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

**DECISION:**

The representative's decision dated March 10, 2008, reference 01, is affirmed. The claimant is not able to work and available for work effective February 12, 2008. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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