

**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: 04A-UI-00478-H2
OC 12-07-03 R 04
Claimant: Respondent (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 and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 6, 2004, reference 01, decision that allowed benefits. After due notice was issued, a hearing was held in Davenport, Iowa on June 9, 2004. The claimant did participate and was represented by John Graupmann, Paralegal with Iowa Legal Aid. The employer did participate through Kerry Roemer, Associate Human Resources Manager. Claimant's Exhibit A was received. Employer's Exhibit One was received.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a production worker full time beginning August 28, 1996 through March 31, 2004 when she was discharged.

The claimant last worked on November 18, 2003 and then was off work for sick leave per her physician instructions outlined in her doctor's note. On December 17, 2003, the claimant presented to the employer a note from her doctor that released her to return to work effective December 17, 2003. The claimant had previously presented to the employer a note releasing her to return to work effective December 9, 2003, but the employer lost the note so she provided another note on December 17, 2003. The fact that the claimant had previously supplied this information to the employer is supported by Employer's Exhibit One a letter of December 17, 2003 from the employer's disability team indicating that they were aware that the claimant had been released to return to work effective December 9, 2003. The employer did not allow the claimant to return to work at that time, notwithstanding her note from her physician because they wanted the claimant to be cleared by their own physician. Before the employer's physician could actually see the claimant to clear her for work she was laid off from work and not recalled until January 5, 2004. The employer's records indicate that the claimant worked two days in February 2004, the 11th and the 16th. Additionally, she was on vacation for some days in January and February 2004. The claimant and employer each agree that the claimant was released to return to work effective March 16, 2004 by all physicians and that the claimant was actually expected to return to work that day. The fact that the claimant had actually worked in February and been on vacation in January 2004 indicates that she was able to and available for work earlier than March 16, 2004. The claimant's eventual separation from her employment on March 31, 2004 is covered in Appeal Number 04A-UI-05369-H2.

The only medical evidence in this record indicates that the claimant was released to return to work effective December 9, 2003. Her doctor's note indicating she was physically able to work is evidence of her ability to actually work. The employer did not allow the claimant to return to work and thereafter laid her off until January 5, 2004. The claimant was recalled to work effective January 5, 2004. The claimant is able to and available for work effective December 9, 2003 when her own physician released her to return to work. The employer did not provide the claimant with work until February 11, 2004.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is 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.

Inasmuch as the injury was non work-related and the treating physician has released the claimant to return to work, the claimant has established ability to work effective December 9, 2004. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

DECISION:

The representative's decision dated January 6, 2004, reference 01, is affirmed. The claimant is able to work and available for work effective December 9, 2003. Benefits are allowed, provided the claimant is otherwise eligible.

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