

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HOWARD G DEAN**  
Claimant

**APPEAL NO. 11A-UI-08885-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/18/10**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from a representative's decision dated June 29, 2011, reference 01, which denied benefits as of May 2, 2010, finding the claimant was not able to perform work. After due notice was issued, a telephone hearing was held on August 24, 2011. The claimant participated personally. Participating on behalf of the claimant was Mr. Dennis McElwain, attorney at law.

**ISSUE:**

At issue is whether the claimant was able and available for work.

**FINDINGS OF FACT:**

Having considered the evidence in the record, the administrative law judge finds: Howard Dean opened a claim for unemployment insurance benefits with an effective date of April 18, 2010, and was issued the customary informational and instructional pamphlet explaining the unemployment compensation system and its requirements.

Mr. Dean had previously worked as a packing house worker but was unable to continue working in occupational fields that required prolonged standing due to a medical condition. Mr. Dean sought employment in occupational fields that did not require extensive standing or heavy physical exertion and was willing to accept employment in a variety of fields available in general employment.

On June 17, 2011, Mr. Dean self-reported to Iowa Workforce Development the possibility that he might receive back disability payments from supplemental security income. Although the claimant had been actively seeking employment in other occupational fields during the time he claimed benefits, Mr. Dean, at that time, was unsure how to answer a questionnaire and checked both the "I am" and the "I am not" portions of the form relating to whether he was able and available for work.

## **REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the evidence in the record establishes whether the claimant was able and available for work as of May 2, 2010. It does establish the claimant was able and available.

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".

The evidence in the record establishes the claimant actively sought employment with prospective employers after opening a claim for unemployment insurance benefits. The evidence establishes that Mr. Dean routinely sought employment that offered sedentary work that did not require prolonged periods of standing because of an existing medical condition. The claimant is not able to look for or accept heavy work or work that required prolonged standing due to his medical condition, but actively sought other types of employment that were generally available in the work field that fit the limitations of his medical condition.

The administrative law judge concludes, based upon the totality of the evidence in the record, the claimant was able and available for work and thus eligible to receive unemployment insurance benefits effective May 2, 2010, provided he meets all other eligibility requirements of the law.

## **DECISION:**

The representative's decision dated June 29, 2011, reference 01, is reversed. The claimant was able and available for work effective May 2, 2010, and is eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements of Iowa law.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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