

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNETH L STEPHEN
Claimant

APPEAL NO. 09A-UI-02405-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FARMLAND FOODS INC
Employer

OC: 01-04-09
Claimant: Appellant (1)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the February 11, 2009, reference 01, decision that found him not able to and available for work and denied benefits. After due notice was issued, a hearing was held on April 2, 2009. The claimant did participate. The employer did participate through Becky Jacobsen, Human Resources Director. Claimant's Exhibit A was received.

ISSUE:

Was 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 scale technician full time. He remains an employee on the date of the hearing and returned to work on March 10, 2009. The claimant was off work from December 30, 2008 through March 9, 2009 to have a non-work-related aortic aneurism repaired. The employer would not allow the claimant to return to work until he was physically able to perform all of the functions of his job. The employer does not accommodate work restrictions that are imposed on an employee due to an illness or injury that is not work related. The claimant's aortic aneurism was not a work-related illness or injury.

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 from December 30, 2008 through March 9, 2009.

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 illness was not work related and the treating physician did not release the claimant to return to work without work restrictions until March 9, 2009, the claimant has not established ability to work. Employer is not obligated to accommodate a non-work-related medical condition, thus until claimant was released to perform his full work duties, he was not considered able to or available for work. Benefits are denied from December 30, 2008 through March 9, 2009.

DECISION:

The representative's decision dated February 11, 2009, reference 01, is affirmed. The claimant is not able to work and available for work effective December 30, 2008 through March 9, 2009.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css