

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ORLANDO T BUFORD
Claimant

APPEAL NO. 08A-UI-00994-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 01/06/08 R: 01
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Orlando Buford filed an appeal from a representative's decision dated January 24, 2008, reference 01, which denied benefits effective January 6, 2008, upon a finding the claimant was not able to work from December 13, 2007, through January 11, 2008, and is under light duty restrictions for six months. After due notice was issued, a hearing was held by telephone on February 12, 2008. Mr. Buford participated personally.

ISSUE:

The issue in this matter is whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all the evidence in the record, finds: The claimant was discharged from his employment with Golden Crest Baking on December 19, 2007, due to absenteeism related to medical issues. Mr. Buford had provided notice to the employer of the reason for his impending absence but was discharged when he exceeded the permissible number of absences allotted by company policy. Mr. Buford underwent stomach surgery for the non-work-related condition and was not allowed to work by his physician until January 11, 2008. As of January 11, 2008, the claimant was released for light duty work by his physician. The claimant has actively and earnestly sought re-employment in jobs that do not require strenuous activity since filing his claim for unemployment insurance benefits.

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 as of January 11, 2008.

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.

The evidence in the record establishes that Mr. Buford has been released to perform light duty work as of January 11, 2008, and has actively and earnestly sought work in occupational jobs that do not require strenuous activity since that date. The administrative law judge therefore concludes that the claimant is able and available for work within the meaning of the Iowa Employment Security Act as of January 11, 2008.

DECISION:

The representative's decision dated January 24, 2008, reference 01, is modified to hold the claimant ineligible for benefits from January 6, 2008, through January 11, 2008. The claimant is determined to be able and available for work after January 11, 2008, and eligible to receive unemployment insurance benefits, provided he meets all other eligibility requirements of Iowa law.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw