

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARY P GRECO**

Claimant

**APPEAL NO. 08A-UI-11655-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE WACKENHUT CORPORATION**

Employer

**OC: 10/26/08 R: 03  
Claimant: Appellant (4)**

Section 96.4-3 – Able and Available for Work

**STATEMENT OF THE CASE:**

Mary Greco filed an appeal from a representative's decision dated December 8, 2008, reference 01, which denied benefits effective October 26, 2008, finding the claimant was not able to work due to an injury. After due notice was issued, a hearing was held by telephone on December 29, 2008. The claimant participated personally. Participating as a witness was Ms. JoDee Flockhart. Claimant's Exhibits One and Two were received into evidence.

**ISSUE:**

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

**FINDINGS OF FACT:**

Having reviewed all the evidence in the record, the administrative law judge finds: Ms. Greco opened a claim for unemployment insurance benefits effective October 26, 2008. On September 19, 2008, the claimant was involved in a serious motor vehicle accident and sustained substantial injuries. The claimant was recuperating and was not able to work until November 17, 2008, when she was released by her physician to resume employment. Ms. Greco resumed employment at that time, working half-time for first week and full-time thereafter.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work effective the week of November 17, 2008. The evidence in the record establishes that the claimant had been seriously injured in a motor vehicle accident on September 19, 2008, and had opened a claim for unemployment insurance benefits on October 26, 2008. At the time that Ms. Greco opened her claim for benefits, she continued to be under the care of a physician, suffering from injuries sustained in the motor vehicle accident, and was not able to perform services for an employer. Based upon the evidence in the record, the administrative law judge concludes the claimant was released to return to work and returned on Monday, November 17, 2008, thus demonstrating that she was able to work effective November 17, 2008.

Although sympathetic to the claimant's situation, the administrative law judge must conclude, based upon on the evidence in the record, that the claimant was not able to work and thus ineligible to receive unemployment insurance benefits beginning October 26, 2008, until the week beginning November 17, 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".

**DECISION:**

The December 8, 2008, reference 01, decision is affirmed as modified. The claimant was not able to work from October 26, 2008, until November 17, 2008, and is ineligible to receive unemployment insurance benefits for that period. The claimant is eligible to receive unemployment insurance benefits beginning the week ending November 22, 2008, provided that she 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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