

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MITCHELL L GRAHAM**  
Claimant

**APPEAL NO. 12A-UI-12752-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 06/10/12**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
871 IAC 24.23(1) – Unable to Work/Illness or Injury

**STATEMENT OF THE CASE:**

The claimant appealed from a representative's decision dated October 23, 2012, reference 02, that held he was not eligible for benefits effective October 7, 2012, because he was unable to perform work due to injury. A hearing was held on November 20, 2012. The claimant participated.

**ISSUE:**

The issue is whether claimant is able and available to work.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant last worked as a full-time inspector for Wellman Dynamics on June 8, 2012. He had missed substantial work due to back injuries with surgery. The employer did not protest his employment separation.

Claimant received workers' compensation after the employment separation but the department issued a decision on June 27, 2012 reference 01 it was not deductible from benefits. Claimant has been looking for gainful employment for which he has experience in the fast food industry and retail. He recently was re-employed by his former employer, Wellman Dynamics, on October 30 and remains employed thru the date of this hearing.

**REASONING AND CONCLUSIONS OF LAW:**

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 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

The administrative law judge concludes no availability disqualification is imposed effective October 7, 2012. While claimant has a history of back injuries, he was looking for gainful employment where he has experience and is capable of performing work while receiving a non-deductible workers' compensation benefit. His ability to work is confirmed by his re-employment with his former employer on October 30 in the same job he had before his June 8 employment separation. If there was a medical work restriction, the former employer would not have returned claimant to his former job.

**DECISION:**

The decision of the representative dated October 23, 2012, reference 02, is reversed. The claimant is eligible for benefits as he was able and available for work effective October 7, 2012.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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