

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELVIN J CUMMER
Claimant

APPEAL NO: 12A-UI-03673-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIAMOND JO LLC/DIAMOND JO CASINO
Employer

OC: 02/26/12

Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Melvin J. Cumber (claimant) appealed a representative's April 3, 2012 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits in conjunction with his employment with Diamond Jo, L.L.C. / Diamond Jo Casino (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 24, 2012. The claimant participated in the hearing and presented testimony from one other witness, Sadie Braet. The employer failed to respond to the hearing notice and provide a telephone number at which a witness or representative could be reached for the hearing and did not participate in the hearing. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant has worked as a dealer at the employer's casino since April 14, 2005. Prior to October 2011, he worked full-time, ten-hour shifts on Tuesdays, Wednesdays, Fridays, and Saturdays. The claimant determined to scale back on his hours, so after October 2011 he worked only Tuesdays, Fridays, and Saturdays.

He last worked for the employer on about January 31, 2012. Since that time, he has been off work due to an infection in his leg. His doctor ordered him to be off work completely through February 21. On February 24 the doctor indicated that the claimant could return to work on a limited basis, no more than eight hours per day, and no two days together—he would need to have at least one day off between shifts worked. The doctor confirmed those restrictions in early March and had not modified those restrictions as of April 24.

The claimant communicated with the employer regarding returning to work within the work restrictions. However, the employer was only willing to allow the claimant to return to work if he could work both Fridays and Saturdays, which was contrary to the claimant's doctor's restrictions.

The claimant established an unemployment insurance benefit year effective February 26, 2012.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). A claimant must remain available for work on the same basis as when his base period wages were accrued. 871 IAC 24.22(2)f.

The claimant's unemployment is due to his being on a de facto leave of absence due to a non-work-related medical issue. As the condition causing his temporary unemployment was not shown to be related to the work environment, in order to be sufficiently well for the claimant to regain his eligibility status as being able and available for work, he must have a complete recovery to full work duties without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. Unemployment insurance benefits are not intended to substitute for health or disability benefits. *White v. Employment Appeal Board*, 487 N.W.2d 342 (Iowa 1992). For the period the claimant is seeking unemployment insurance benefits, at least through the date of the hearing, he was under sufficient work restrictions as would preclude him from returning to his regular work duties. He is therefore not eligible to receive unemployment insurance benefits for that period.

DECISION:

The representative's April 3, 2012 decision (reference 01) is affirmed. The claimant is not able to work and available for work effective February 26, 2012. The claimant is not qualified to receive unemployment insurance benefits until he has sufficiently recovered, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw