

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LELAND H HUTCHISON
Claimant

APPEAL NO. 17A-UI-08227-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KAPSTONE CONTAINER CORPORATION
Employer

OC: 07/09/17
Claimant: Appellant (1R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Leland Hutchison (claimant) appealed a representative's August 9, 2017, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he requested and was granted a leave of absence from Kapstone Container Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for August 31, 2017. The claimant participated personally. The employer did provide a telephone number for the hearing. Prior to the hearing the employer's representative informed the administrative law judge that the employer had elected not to attend the scheduled hearing. The claimant offered and Exhibit A was received into evidence. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the claimant is able to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from September of 2016, to March 30, 2017. The claimant reported to the employer a work-related injury on December 1, 2016. The employer provided medical care and treatment. He was released to return to work with restrictions on his wrist. The claimant suffered a non-work-related knee injury and had surgery on February 10, 2017. The claimant was released to return to work without restrictions on his knee.

On March 28, 29, and 30, 2017, the claimant's supervisor told the claimant to paint on his hands and knees. Each day claimant told the supervisor that painting was not within his restrictions. The supervisor would not relieve the claimant of the duty to paint. The claimant did not refuse the supervisor's direction and report to the supervisor's superior. Each day the claimant reported the swelling in his knee and wrist, a new work injury, to the same supervisor. The supervisor did not complete a new report of injury or send the claimant to the employer's physician. After the third day the claimant called the employer's physician but the physician would not see him. The claimant sought help from the union and made an appointment with a private physician.

The claimant's private physician restricted the claimant from working until June 28, 2017. The employer asked the claimant to come in to work on July 5, 2017. The claimant did not appear because the doctor had scheduled the claimant for wrist surgery on July 20, 2017. Before and after the surgery the claimant understood he was released to return to work so long as he only used his right arm. The employer told the claimant he could not return to work with any restrictions from his private doctor. On August 21, 2017, the claimant's physician completed a provider statement indicating the claimant was not to work after the surgery and not to use his left wrist. On August 30, 2017, the claimant's physician told the claimant's attorney that the claimant was able to work only using his right arm. With these restrictions, the claimant might be able to pass out orders for the employer.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work.

Iowa Admin. Code r. 871-24.23(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.

When an employee has a medical issue and is unable to perform work due to that injury, he is considered to be unavailable for work. The claimant was injured and his physician said he could not work after his surgery. Nine days later the same doctor said the claimant could only use one arm to work. The claimant is considered to be unable to work. The claimant is disqualified from receiving unemployment insurance benefits beginning July 9, 2017, due to his inability to work.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The representative's August 9, 2017, decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits beginning July 9, 2017, due to his inability to work. Should circumstances change and the disqualification can be removed, notification should be made to the local workforce development center.

The issue of the claimant's separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs