

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM J HILLER**  
Claimant

**APPEAL NO. 07A-UI-08527-S2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHAUS-VORHIES CONTRACTING INC**  
Employer

**OC: 07/29/07 R: 03**  
**Claimant: Appellant (1)**

Section 96.4-3 - Able and Available

**STATEMENT OF THE CASE:**

William Hiller (claimant) appealed a representative's August 27, 2007 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits from July 29 through August 18, 2007, because he was not able and available for work with Schaus-Vorhies Contracting (employer) due to an injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 19, 2007. The claimant participated personally. The employer participated by Debra Ellenberg, Human Resources Manager.

**ISSUE:**

The issue is whether the claimant was able and available for work from July 29 through August 18, 2007.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on October 24, 2005, as a full-time laborer. The claimant suffered a non-work-related injury on or about July 28, 2007. He broke his shoulder blade in a dirt biking accident. The claimant was restricted from work from July 29 through August 12, 2007. He was released to return to work with restrictions from August 13 through 20, 2007. The claimant had to wear a harness and lanyard while working. The employer had no work available for the claimant until he was released to return to work without restriction.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the claimant was not able and available for work.

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.

871 IAC 24.22(2)m 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

m. Restrictions and reasonable expectation of securing employment. An individual may not be eligible for benefits if the individual has imposed restrictions which leave the individual no reasonable expectation of securing employment. Restrictions may relate to type of work, hours, wages, location of work, etc., or may be physical restrictions.

Inasmuch as the injury was non-work-related and the treating physician had released the claimant to return to work with restrictions, the claimant has not established ability to work from July 29 through August 18, 2007. The employer had no work available to accommodate the claimant's work restrictions. Benefits are denied from July 29 through August 18, 2007.

**DECISION:**

The representative's August 27, 2007 decision (reference 02) is affirmed. The claimant is not eligible to receive unemployment insurance benefits from July 29 through August 18, 2007, because he was not able to work.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

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