

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

DUANE E PEARSON

Claimant,

and

IOWA WORKFORCE

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HEARING NUMBER: 13B-UI-12386

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A **REHEARING REQUEST** shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board, one member dissenting, reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

Monique F. Kuester

Cloyd (Robby) Robinson

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the decision of the Employment Appeal Board; I would reverse the decision of the administrative law judge in its entirety. The Claimant was working light duty with a 5-lb weight restriction resulting from a work-related shoulder injury. The Claimant has a 10th grade education and no computer experience. The administrative law judge assumed facts that were not in the record when she indicated that the Claimant was not eligible because he has no computer skills. There are numerous jobs in the workforce that do not require computer skills. However, even most cash register operators are afforded training on the cash register. Other job possibilities include cab driver, bus driver, light packing, fast food industry, Wal-Mart greeter, inter alia. The record lacks evidence to support that the Claimant would be precluded from work in any of the aforementioned areas. In order to be able and available, all the law requires is that a person "...must be physically able and available for work, not necessarily in the individual's customary occupation, but in some *reasonably suitable, comparable, gainful, full-time endeavor*... that is generally available in the labor market..." (Emphasis added.) See, 871 IAC 24.22(1)"b." For this reason, I would conclude that the Claimant is able and available for work and benefits should be allowed.

John A. Peno

The Employment Appeal Board would correct the administrative law judge's Reasoning and Conclusions of Law, p.2, last paragraph to reflect that the Claimant is ***not*** eligible for benefits.

John A. Peno

Monique F. Kuester

Cloyd (Robby) Robinson

AMG/fnv