

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VICTOR M OCHOA
Claimant

APPEAL NO. 10A-UI-01295-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JACOBSON INDUSTRIAL SERVICES
Employer

OC: 01/04/09
Claimant: Appellant (2)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Victor Ochoa filed an appeal from a representative's decision dated January 21, 2010, reference 02, which denied benefits on a finding that he was not able to work. After due notice was issued, a hearing was held by telephone on March 8, 2010. Mr. Ochoa participated personally. The employer participated by Liz Jerome, Account Manager. Ike Rocha participated as the interpreter.

ISSUE:

At issue in this matter is whether Mr. Ochoa satisfies the availability requirements of the law.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ochoa began working for Jacobson Industrial Services on April 27, 2008. He worked full time operating a forklift and mounting tires. He sustained an injury to his right leg and ankle at work on December 9, 2009. On December 14, he presented a note from the doctor outlining his restrictions. He was not to engage in prolonged standing or walking. He was not to lift more than 15 pounds. He could, however, continue to operate a forklift. Mr. Ochoa was told the employer did not have work available within his restrictions and that he should return when all of his restrictions were lifted.

REASONING AND CONCLUSIONS OF LAW:

In order to receive job insurance benefits, an individual must be able to and available for work. Iowa Code section 96.4(3). Mr. Ochoa's doctor indicated that he could not stand or walk for long periods of time and could not lift more than 15 pounds. However, the doctor did not restrict him from driving a forklift, which involves primarily sitting. There are any number of industries that utilize forklifts to move products and materials. Therefore, it is permissible to presume that a significant number of such jobs exist in the local economy. Inasmuch as Mr. Ochoa has experience operating a forklift and retains the physical ability to do so, it is concluded that he is able to work within the meaning of the law.

The administrative law judge appreciates that Mr. Ochoa may have been unable to perform all of the functions of his job with Jacobson. However, where an individual's restrictions are the result of a work-related injury, he need not have a full release when he re-offers his services to the employer. See Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). As such, the fact that Mr. Ochoa did not have a full release when he re-offered his services to the employer on December 14 is not a bar to his receipt of job insurance benefits.

DECISION:

The representative's decision dated January 21, 2010, reference 02, is hereby reversed. Mr. Ochoa is allowed job insurance benefits effective December 13, 2009 as he satisfied the availability requirements of the law. Benefits are allowed, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css