

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

YOANDY RAMOS
Claimant

APPEAL NO. 14A-UI-03476-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MID-AMERICAN DRILLING CORP
Employer

OC: 11/04/12
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from the March 26, 2014, (reference 04) unemployment insurance decision that denied benefits for the three weeks ending June 8, 2014 based upon a finding that the claimant was not able to and available for work. After due notice was issued a hearing was held on April 22, 2014. The claimant did participate with the assistance of interpreter, Ike Rocha and was represented by Michael J. Tullis, Attorney at Law. The employer did participate through Debbie Rollins, Office Manager/Secretary. Claimant's Exhibits A through C were entered and received into the record.

ISSUE:

Was the claimant able to and available for work from May 20, 2013 through June 8, 2013?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant cut his right thumb in a work-related accident on May 20, 2013. He was taken off work by his treating physician through May 22. The claimant asked the employer for additional time off through May 28 based upon his complaints of pain. The employer granted the claimant's request. On May 28 the claimant again presented at work and asked for additional time off due to pain. The claimant did not have any work restrictions from any medical provider nor did he ask the employer to send him back to the doctor for additional medical care. The claimant indicated to the employer that he physically could not work on May 28, 2013. The claimant was physically unable to work from May 20, 2013 through May 28, 2013. As of May 28, 2013 the claimant was separated from his employment. While he indicated he was not able to perform the work this employer wanted him to do; he was able to perform lighter duty work. The claimant was able to perform some type of work as of May 28, 2013.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work 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(2) 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.

The claimant was taken off work by his treating medical provider from May 20 through May 22. The claimant then represented to the employer that he could not work up to and including May 28, 2013. The claimant is not able to and available for work by his own opinion through May 28, 2013. The claimant was separated from this employer on May 28, thus, the analysis of his availability must be considered in the labor market appropriate for him. The claimant was able to and available for lighter duty work, despite the fact that he had no work restrictions from any medical provider after May 22, 2013. Accordingly, benefits are denied for the period from May 20, 2013 through May 28, 2013. Thereafter, beginning on May 29, 2013 the claimant is considered able to and available for work and benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The March 26, 2014, (reference 04) decision is modified in favor of the appellant. The claimant is not able to work and available for work effective May 20, 2013 through May 28, 2013. Benefits are denied for that period. The claimant is considered able to and available for work effective May 29, 2013.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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