

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD P VANDERPOOL
Claimant

APPEAL NO. 13A-UI-11120-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

REINHART FOODSERVICE LLC
Employer

OC: 09/01/13
Claimant: Appellant (1)

Section 96.4-3 – Able and Available
871 IAC 24.23(1) – Unable to Work/Illness or Injury

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated September 25, 2013, reference 02, that held he was unable to perform work due to injury on September 1, 2013 and benefits are denied. A hearing was held on October 23, 2013. The claimant did not participate. Mimi Loungvan, HR Manager, participated for the employer.

ISSUE:

The issue is whether claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds that: The claimant began work on October 1, 2012 as a full-time driver. He last worked on February 5, 2013 when he suffered a job-related injury that he reported to the employer on the 12th. He was granted worker's compensation and placed on medical leave pending recovery.

The employer offered claimant in August to participate in a transitional program that would allow him to perform work given restrictions he could not drive. Claimant refused. The employer stopped worker's compensation for his refusal. Although claimant received a doctor release on September 4 there was an issue whether he could return to his full-time driver position and he went for a functional work evaluation. The employer has not received an unrestricted medical release claimant can return to his full-time driver job as of the date of this hearing.

Claimant failed to respond to the hearing notice with a phone number to be called for the hearing. The law judge checked the Appeals log record (APLT) immediately prior to the hearing and there was no call in from claimant.

REASONING AND CONCLUSIONS OF LAW:

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 24.23(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.

The administrative law judge concludes claimant does not meet the availability requirements of the law effective September 21, 2013 because he is unable to return to work for the employer due to an injury.

Claimant needs to provide the employer with an unrestricted medical release that would allow him to perform his duties as a full-time driver.

DECISION:

The decision of the representative dated September 25, 2013, reference 02, is affirmed. The claimant is not eligible for benefits effective September 1, 2013 because he does not meet the availability requirements of the law.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs