

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DEAN DOERSCHER**  
Claimant

**APPEAL NO: 16A-UI-12271-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JM BOWIE EQUIPMENT INC**  
Employer

**OC: 10/16/16  
Claimant: Respondent (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 10, 2016, reference 02, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on November 30, 2016. The claimant participated in the hearing. Jim Bowie and Maureen Bowie, Owners, participated in the hearing on behalf of the employer.

**ISSUE:**

The issue is whether the claimant is able and available for work.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant suffered from low back problems and scheduled surgery. He was off work due to his back condition from August 29 through October 10, 2016, at which time he was released to return to work with a 25 pound lifting restriction. The employer accommodated his restriction but planned a working vacation from October 12 through November 6, 2016. Consequently, the business was shut down during that period of time.

The employer's personnel consist of the claimant and the husband and wife co-owners. The employer usually allowed the claimant to run the business when it took extended working vacations but because of the claimant's restriction, and the fact the employer would not be there to supervise him and insure he did not violate his restriction, the employer chose to shut the business down from October 12 through November 6, 2016. The claimant returned to work November 7, 2016, and secured a full release to return to work without restrictions November 29, 2016.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

Iowa Code § 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".

While the claimant was released with a 25 pound lifting restriction October 10, 2016, the employer chose to accommodate his restriction and allowed him to return to work prior to the time he received a full release to return to work November 29, 2016. The claimant did not work from October 12 through November 6, 2016, because the employer chose to shut the business down during a working vacation rather than have the claimant work unsupervised. After the claimant was released to return to work with restrictions and the employer chose to allow him to return to work, the claimant did not work October 12 through November 6, 2016, due to the employer's decision to shut down the business during that time. Accordingly, the claimant's brief period of unemployment was attributable to the employer's shutdown. Once the employer allowed the claimant to return to work with a restriction, the claimant became able and available for work. Therefore, benefits must be allowed.

**DECISION:**

The November 10, 2016, reference 02, decision is affirmed. The claimant is able to work and available for work effective October 16, 2016. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/rvs