

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JUAN C ESCOBAR CRUZ
Claimant

E & M HOLDINGS LLC
Employer

APPEAL NO. 15A-UI-09532-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/16/14
Claimant: Appellant (2)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated August 21, 2015 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on September 11, 2015. Claimant participated personally. Employer participated by hearing representative Sarah Emery, with witness Tom Egli. Claimant's Exhibits A-B were admitted into evidence. Interpretive services were provided for the court's convenience by Ike Rocha.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was hired by employer on March 25, 2015. Claimant worked lifting manufactured granite and moving the slabs which weigh at or around 100 pounds apiece. Claimant's last day of work for employer was July 21, 2015. On or around July 21, 2015, claimant injured his shoulder at work when a coworker passed a piece of granite when claimant was not ready to receive the piece. Claimant did not immediately go to employer with this injury. Claimant the next day was alerted that his shoulder was injured when he attempted to lift his 40-pound daughter. Claimant was seen at Broadlawns hospital by a Dr. Neff on July 28, 2015. Dr. Neff sent a work release which included restrictions that claimant could not use his left arm, and that it must remain in a sling.

Claimant came back to work on July 29 and had a discussion with the owner through a friend and coworker. Claimant stated that the doctor indicated he might need surgery and that his shoulder appeared to have past degeneration. Claimant then went to a chiropractor on or around August 18, 2015 who placed a 20-pound restriction on claimant's lifting. Claimant's normal job for employer required lifting more than 20 pounds on a regular basis.

REASONING AND CONCLUSIONS OF LAW:

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.22(1)a 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.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

The claimant is restricted from lifting over 20 pounds. Other than this restriction the claimant can perform work in a number of positions which do not require lifting over 20 pounds. The claimant has met his burden of proof to show that he has the ability to work.

When an employee is ill and unable to perform work due to that illness, claimant is considered to be unavailable for work. The claimant in this matter was released to return to work with restrictions by two physicians. Claimant is considered to be available for work because two physicians stated claimant was able and available for work with restrictions. Claimant will not be restricted from receiving unemployment benefits because employer does not have work that will fit within claimant's restrictions. The claimant is not disqualified from receiving unemployment insurance benefits.

The claimant has established the ability to work, although he cannot work in his normal position. Benefits shall be allowed effective July 29, 2015.

DECISION:

The decision of the representative dated August 21, 2015, reference 02, is reversed. Claimant is eligible to receive unemployment insurance benefits, effective July 29, 2015, provided claimant meets all other eligibility requirements.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/css