

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALAN F GREEN

Claimant

APPEAL NO: 12A-UI-04697-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLE'S QUALITY FOODS INC

Employer

OC: 06/03/12

Claimant: Appellant (3/R)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Alan F. Green (claimant) appealed a representative's April 15, 2013 decision (reference 06) that concluded he was not qualified to receive unemployment insurance benefits as of June 3, 2012 because of not being able and available for work. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held at 1:00 p.m. on May 30, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. The employer's representative received the hearing notice and responded by sending a statement to the Appeals Section indicating that the employer was not going to participate in the hearing; the employer's account has already been deemed to not be subject to charge. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant had a separation from employment with the employer as of December 2, 2011. The claimant had already had a claim for unemployment insurance benefits he had established effective June 5, 2011. He reopened that claim and received unemployment insurance benefits from November 6, 2011 through November 26, 2011. Upon his separation, he reopened his claim with an additional claim effective December 4, 2011. Upon expiration of that original claim year, he established a second unemployment insurance benefit year effective June 3, 2012.

On July 9, 2012 an Agency representative issued a decision (reference 02) concluding that the separation was disqualifying. The claimant appealed that decision. On February 26, 2013 a decision was issued by an administrative law judge under 12A-UI-08579-W which concluded that the separation, which was related to an illness on the part of the claimant, was not disqualifying. However, the decision also noted that there was an issue yet to be determined as

to whether there was a period of time where the claimant was not able and available for work, so the decision remanded the issue back to the Agency Unemployment Division "to determine when claimant became able and available for gainful employment."

Upon receiving the remand, the Unemployment Division conducted a fact-finding interview. The claimant informed the Agency representative that "I was diagnose(d) with PTSD and was not able and available to work in December of 2011 for a couple of months." (Emphasis added.) Not knowing what the end date of the claimant's disability might have been, the Agency representative issued the decision in this case which disqualified the claimant indefinitely as of June 3, 2012, until such time as the claimant could show he had recovered and become able and available for work.

The claimant then appealed that decision to the Appeals Section; he submitted medical documentation with his appeal. The documents indicate that there were periods of time, particularly the periods of November 17 through November 27, 2011 and December 7 through December 14, 2011 where the claimant was under medical care and taken off work. However, the most recent of the medical documentation is from January 4, 2012 and indicates only that the claimant had been hospitalized From December 19, 2011 through January 4, 2012, and that he was then "discharged to a supervised residential setting." There is a further document indicating that the claimant was authorized for outpatient treatment from July 2012 through May 2013, but it does not indicate whether the claimant was able to work during the period of outpatient treatment. Agency records indicate that the claimant did enter into new employment with a new employer on or about July 9, 2012.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). Being under a doctor's restriction against working is prima facie evidence that a claimant is not able and available for work. 871 IAC 24.22(1)a; 871 IAC 24.23(2), (6), (35).

For the benefit weeks ending November 19, 2011 and November 26, 2011 the claimant was under a doctor's care and not able and available for work. Also, beginning December 3, 2011 the claimant was not able and available for work. He has not demonstrated that there was a point in time prior to July 9, 2012 when he was released by his doctor and became able and available for work. He was not eligible to receive unemployment insurance benefits during those periods.

As of July 9, 2012 the claimant has demonstrated at least through obtaining new employment that he is now again able to work in some gainful employment. Benefits would be allowed as of that date, if the claimant is otherwise eligible.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. In this case, the claimant received benefits

for benefit weeks in November and December 2011 as well as from January 2012 through July 7, 2012, but was ineligible for those benefits as not being able and available for work. The matter of determining the amount of the overpayment is remanded the Claims Section.

DECISION:

The representative's April 15, 2013 decision (reference 06) is affirmed as modified. The claimant was not able to work and available for work effective the benefit weeks ending November 19 and November 26, 2011, and was not able and available for work for the period of December 3, 2011 through July 7, 2012. Effective July 8, 2012 the claimant is again qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs