

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A SANDERS
Claimant

APPEAL NO: 12A-UI-11181-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 08/19/12
Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's September 4, 2012 determination (reference 01) that held him ineligible to receive benefits as of August 19, 2012, because he was unable to work. The claimant participated in the hearing. During the hearing, Claimant Exhibits A & B were offered and admitted as evidence. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant is not eligible to receive benefits as of August 19, 2012.

ISSUE:

As of August 19, 2012, is the claimant able to work and eligible to receive benefits?

FINDINGS OF FACT:

The claimant works as a maintenance employee. Part of his job requires him to climb ladders and stairs to take readings on equipment, turn valves off and on and change compressors. About 50 percent of the claimant's work involves completing paperwork that he completes at a desk.

On July 29, the claimant broke his foot when he was not at work. The claimant had to use crutches after he broke his foot. The claimant's physician released him to work on August 27, 2012, but the claimant still used crutches. (Claimant Exhibit A.) The claimant estimated he could do about 50 percent of his job as of August 27, 2012. He could not climb stairs or ladders. The claimant's employer will not allow him to return to work until his physician releases him to work with no work restrictions.

The claimant established a claim for benefits during the week of August 19, 2012. He has filed claims for the weeks ending August 25 through October 6, 2012.

On September 13, 2012, the claimant's physician advised the claimant he could return to work with the following restrictions:

Cannot lift or pull more than 10 pounds
Can walk, stand, bend, squat, climb, kneel, twist and operate a vehicle less than
0 to 33 percent of the time
No sitting restrictions

(Claimant Exhibit B.) As of September 13, the claimant no longer had to use crutches.

As of October 9, the claimant was walking at his home and climbing stairs with no aid on his broken foot. The claimant anticipates his physician will release him to work without any or limited restrictions at his next appointment on October 26, 2012.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). When the claimant offered to return to work in mid-August, he was only able to do about 50 percent of his job. Since the claimant did not break his foot at work, the employer is not legally required to make accommodations so he can work part time. As of August 27, the claimant was looking for a tailor-made job to accommodate his work restrictions.

On September 13, the claimant's physician still restricted him from doing about one-third of his job. The claimant was still limited or restricted in performing his work other than paper or desk work. As a result of his work restrictions, he was still looking for a tailor-made job and is not eligible to receive benefits. (Based on his current work restrictions, he is capable of performing approximately 66 percent of his job.)

As of August 19, the claimant is not eligible to receive benefits because his work restrictions require him to perform a tailor-made job. After the claimant sees his physician again (after September 13), if he does not return to work, he should submit his work restrictions and request that the Department determine if he then has established his availability to work.

DECISION:

The representative's September 4, 2012 determination (reference 01) is affirmed. The claimant is not eligible to receive benefits as of August 19 because his work restrictions as of August 27 and September 13 only allow him to work at a tailor-made job and restricts his availability to work at his full-time job. The claimant remains ineligible to receive benefits until his physician releases him to work without any work restrictions or his work restrictions do not require the claimant to look for a tailor-made job.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css