

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAY BOOTSMA
Claimant

APPEAL NO: 13A-UI-13225-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

POET BIOREFINING – ASHTON
Employer

OC: 10/27/13
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the November 27, 2013, reference 01, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 19, 2013. The claimant participated in the hearing. Jolynn Hindt, Controller, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

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 was employed by Poet Biorefining until November 15, 2013. The claimant strained a muscle in his back on his day off, October 21, 2013. He called the employer the evening of October 22, 2013, to notify it he was going to the doctor October 23, 2013. The doctor diagnosed the muscle strain and gave him a prescription for pain medication and muscle relaxers to take before going to bed. The claimant has taken muscle relaxers off and on for the last eight years due to back surgery several years ago. He called his supervisor October 23, 2013, and told him he had a lower inflammation in his lower back from when he had surgery years ago, prescribed pain medication and muscle relaxers to take as needed and that he would be fine. The claimant clocked in October 28, 2013, his next scheduled shift, and his supervisor called him to the office and stated he was concerned about the medication the claimant was taking. He sent him home until November 1, 2013. He also told the claimant to try to get a doctor's note stating he could return to work even though the claimant's doctor never excused him from work or imposed any restrictions on him. The claimant called his doctor for a release but the doctor refused to provide one because he had never written a note taking the claimant off work or restricted his work or any other activities. On October 30 or 31, 2013, the claimant told his supervisor he could not get a note releasing him to return to work and explained the situation to him. His supervisor stated he could not accept anything but a full release. The claimant received a certified letter dated November 8, 2013, stating he had to provide a written release to return to work from his physician by November 15, 2013, or his employment would be

terminated (Employer's Exhibit One). The claimant took the letter to his doctor and was told the doctor could not provide the requested documentation. The claimant's employment was terminated November 15, 2013.

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 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".

The claimant was never taken off work by his doctor or placed on any type of restriction for the muscle strain he experienced in his back October 21, 2013. The claimant had back surgery approximately eight years ago and has taken muscle relaxers as needed since that time without any consequences at work or anywhere else. Because the claimant was never taken off work or placed on any restrictions, he has always been able and available for work and maintains that status. The doctor was prohibited from writing the release when he had never written a note excusing the claimant from work or placing him on any restrictions in the first place. The employer's insistence that he provide a full release to return to work, when he was never taken off work or placed on restrictions by his doctor, was unreasonable and, as it turns out, impossible and it is extremely unfortunate and confounding that the claimant lost his job due to this situation. Accordingly, benefits are allowed.

DECISION:

The November 27, 2013, reference 01, decision is reversed. The claimant is able to work and available for work effective October 27, 2013. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs