

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD L ANDERSON
Claimant

APPEAL NO. 14A-UI-01381-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MARTING MFG OF IOWA INC
Employer

OC: 12/29/13
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

The claimant, Gerald Anderson, filed an appeal from a decision dated January 29, 2014, reference 01. The decision found him ineligible from receiving unemployment benefits. After due notice was issued a hearing was held by telephone conference call on February 27, 2014. The claimant participated on his own behalf. The employer, Marting Manufacturing of Iowa, Inc. (Marting) participated by Plant Manager Larry Monson.

ISSUE:

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

FINDINGS OF FACT:

Gerald Anderson was employed by Marting beginning September 9, 2012, as a full-time welder. He went in family medical leave (FML) December 9, 2013, to have surgery. He attempted to return on December 31, 2013, with a ten-pound weight restriction. ON January 21, 2014, he was given a release with no restrictions but could only work a day and a half before having to go home. The next doctor's note on January 28, 2014, said he could return to work February 5, 2014, with a 20-pound weight restriction for six weeks. He worked only one hour on February 5, 2014, and had to go home because the employer does not have any jobs within his restrictions.

As of the date of the hearing his doctor has not released him to work without restrictions.

REASONING AND CONCLUSIONS OF LAW:

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".

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

871 IAC 24.23(10) provides:

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

The claimant is off work for a non-work-related medical problem. His doctor has not released him to return to work without restrictions. A "recovery" means a complete recovery without restriction. *Hedges v. IDJS*, 368 N.W.2d (Iowa App. 1985).

The claimant is still under a doctor's care and cannot perform his regular job duties with the current restrictions. He is therefore not able and available for work and ineligible for unemployment benefits.

DECISION:

The unemployment insurance decision dated January 29, 2014, reference 01, is affirmed. Gerald Anderson is ineligible for unemployment benefits as he is not able and available for work.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs