

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**RAYMOND L LEE**

Claimant

**APPEAL 15A-UI-02262-GT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOSEPH L ERTL INC**

Employer

**OC: 01/25/15**

**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) – Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) – Availability Disqualifications

**STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated February 11, 2015, (reference 03) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on March 24, 2015. Claimant participated personally. Employer participated by Megan Egan, Human Resources Manager. Employer's Exhibit 1 and Claimant's Exhibits A through R were admitted into evidence.

**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 injured at another employer's place of work on or about November 20, 2014. Claimant was granted FMLA leave by this employer, and he sought medical treatment.

Claimant was later released back to work with restrictions on or about November 21, 2014. Employer could not accommodate those restrictions at that time. Claimant was later released back to work without restrictions on or about January 15, 2015 and claimant attempted to return to work. Claimant was unable to endure the pain associated with his work duties, and went back to the doctor. On or about January 19, 2015 he was placed back on light duty restrictions that this employer was unable to accommodate. Claimant's release back to work date without any restrictions was unclear at that time. Employer had continuing work available for claimant consistent with the employment he had been engaged in prior to his injury.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work effective January 25, 2015.

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 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".

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 physician and has not been released as being able to work.

The Supreme Court ruled that a claimant with a non-work related injury was not able to and available for work and that section 96.5(1)d was not applicable when she returned to work with a restricted release, could not perform her prior job and could not establish any other type of work of which she was capable. *Geiken v. Luthern Home for the Aged*, 468 N.W.2d 223 (Iowa 1991).

The injury did not occur at this employer's workplace. His injury as it pertains to this employer is therefore not a work-related injury. Inasmuch as the medical condition is not work-related and the treating physician has not released the claimant to return to work without restriction, he has not established his ability to work while still an employee of Joseph L. Ertl, Inc. until such time he is released back to work without restrictions. While he may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since he has not been released to perform his full work duties, he is not considered able to or available for work.

The employer is not obligated to accommodate a non-work related medical condition. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

**DECISION:**

The representative's decision dated February 11, 2015, (reference 03) is affirmed. The claimant is not able to work and available for work effective January 25, 2015. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless he is involuntarily separated before that time.

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Duane L. Golden  
Administrative Law Judge

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Decision Dated and Mailed

dlg/pjs