

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM J ZUBROD
Claimant

APPEAL NO: 07A-UI-02325-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 02/12/07 R: 03
Claimant: Appellant (2R)

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the March 1, 2007, reference 08 (amends 06), decision that denied benefits. After due notice was issued, a telephone conference hearing was held on March 26, 2007. Claimant participated with Deb Marten.

ISSUE:

The issue is whether claimant is able to and available for work between January 14, 2007 and February 1.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant is employed as a full time plumber, construction worker and equipment operator for Blazek Corporation of Waller, Iowa since September 20, 2004. He injured his left arm at work on July 6, 2005 when he stepped through a skylight. There is a pending workers' compensation case. He had surgery on January 15, 2007 and was released to return to work without use of the left arm the same day. The occurred during a period of layoff from late November 2006 until he returned to light duty work on March 22, 2007. He works when employer is able to provide light duty work.

Claimant receives disability insurance payments of \$613.00 biweekly, which is calculated as a percentage of his normal income. Claimant received erroneous advice from the local office which led him to discontinue filing weekly claims after the week ending February 10, 2007.

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 § 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), (35) 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.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work, even with restrictions the claimant has established his ability to work. Because the employer had no work or limited light duty available, benefits are allowed.

DECISION:

The representative's decision dated March 1, 2007, reference 08 is reversed. The claimant is able to work and available for work effective January 14, 2007. Benefits are allowed, provided the claimant is otherwise eligible.

REMAND: The application of disability benefits to unemployment insurance benefits and backdating issues delineated in the findings of fact is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs