

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

ALAN W RILEY

Claimant

and

TEAM STAFFING SOLUTIONS INC

Employer

HEARING NUMBER: 17BUI-01378

**EMPLOYMENT APPEAL BOARD
DECISION**

NOTICE

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT IS FILED WITHIN 30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.4-3

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

The Employment Appeal Board would adopt and incorporate as its own the administrative law judge's Findings of Fact with the following modifications:

The workers compensation doctor diagnosed him with having an "...acute degenerating disc [condition]..." (47:14-47:35), which the doctor also concluded to be a pre-existing injury that resulted in "...delayed progression and continual pain..." that happened approximately 2-3 months ago. (50:00-50:54; 1:10:01-1:10:15)

The Claimant continues to be on work restrictions as of the date of the hearing. (54:30-54:55; 55:34-54:39) Every job he has applied to thus far, he cannot do because of his work restrictions. (56:40-57:48; 58:15-59:00) He does not know when the restrictions will be lifted. (57:52-58:06)

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:

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 requirement 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 the benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.22(2) provides:

Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

The record clearly establishes that the Claimant's injury was not work-related and thus the Employer is not obligated to continue his employment while he is on restrictions. The Claimant's argument that he was able to work, is unsubstantiated. Mr. Riley provided ample testimony that while he has maintained two job searches per week as required to receive unemployment benefits, he also admitted that he is unable to accept any of these positions as they do not comport with his work restrictions. He was unable to articulate what jobs he could do within his work restrictions. Almost all jobs require a certain amount of lifting, bending, sitting, standing, etc., all of which are outside his work restrictions. It would logically follow then that the Claimant is not able, nor available to accept any type of work under these circumstances at this time. Mr. Riley could not provide any indication as to when he would be fully released to return to work. Based on this record, we conclude that the Claimant is currently disqualified for receiving benefits until his work restrictions have been lifted. Once those restrictions have been lifted, he may requalify.

DECISION:

The administrative law judge’s decision dated March 7, 2017 is **REVERSED**. The Employment Appeal Board concludes that the Claimant was not able and available for work. Accordingly, he is denied benefits until he can establish that he is not only “...earnestly and actively seeking work...”, but that he is also “...willing, able, and ready to accept suitable work which the individual does not have good cause to refuse...” within the meaning of Iowa law. We would also comment that the Claimant need only establish that he is “...*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.” See, 871 IAC 24.22(1). (Emphasis added.)

Kim D. Schmett

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AMG/fnv