

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DALE L BOWIE
Claimant

APPEAL NO: 07O-UI-08128-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PERKINS RESTAURANT
Employer

**OC: 05/20/07 R: 02
Claimant: Appellant (2)**

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Dale I. Bowie (claimant) appealed a representative's June 14, 2007 decision (reference 01) that concluded he was not qualified to receive unemployment insurance benefits, and the account of Perkins Restaurant & Bakery (employer) would not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 5, 2007. The claimant participated in the hearing. Greg Halterman, the general manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge issued a decision on July 10 that held the claimant's employment separation was for nondisqualifying reasons, but he was not eligible to receive benefits as of May 20, 2007, because he was not able to or available for work as the result of his work restriction.

The claimant appealed the able and available issue to the Employment Appeal Board. The Employment Appeal Board remanded this issue to the administrative law judge to supplement the record.

After hearing notices were again mailed to the parties' last-known addresses of record, a telephone hearing to supplement the record was held on September 10, 2007. The claimant participated in the hearing with his attorney, Carrie O'Connor. The employer did not respond to the hearing notice and did not participate at the September 10 hearing. Based on the evidence presented on July 5 and September 10, 2007, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

From May 20 through August 5, 2007, is the claimant able to and available for work and eligible to receive unemployment insurance benefits?

FINDINGS OF FACT:

When the claimant established a claim for unemployment insurance benefits during the week of May 20, 2007, he was under a doctor's care and could not lift more than five pounds with his left arm. The claimant is right-handed. The claimant had the five-pound weight restriction for his left arm until August 5, 2007. The claimant filed weekly claims for the weeks ending May 26 through August 4, 2007.

During the weeks ending May 26 through August 4, 2007, the claimant made 22 job applications or two each week. The claimant applied to work as a host or cashier in restaurants. The claimant did not apply for management jobs that may have required him to bus tables. The claimant also applied for cashier and customer service jobs at convenience stores, grocery stores and department stores. The claimant has bartending experience and applied for a job as a bartender during these weeks. The claimant's only concern was his application as a banquet supervisor at a motel, but none of the potential employers mentioned anything about having to lift a certain weight.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, he must be able to and available for work. Iowa Code section 96.4-3. Based on the type of work the claimant applied for between May 20 and August 4, 2007, he established he is able to and available for work. The claimant correctly cited Geiken v. Lutheran Home for the Aged, 468 N.W.2d 223 (Iowa 1991) for the proposition that a claimant does not necessarily have to be able to work in his customary occupation, he just has to establish that he is able to work in some reasonably suitable, gainful job in the labor market. Since the claimant established he is able to and available for work during each of the weeks at issue, he is eligible to receive benefits for these weeks.

DECISION:

The representative's June 14, 2007 decision (reference 01) only addressed the claimant's employment separation. This part of the decision was affirmed by the Employment Appeal Board on August 22, 2007. Even though the Claims Section never addressed the issue of whether the claimant was able to and available to work as of May 20, this issue was added or included as part of the July 5, 2007 hearing. As the result of a supplemental hearing on September 10, 2007, the claimant is eligible to receive benefits for the weeks ending May 26 through August 4, 2007. The claimant established he is able to and available to work during these weeks.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs