

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DONALD BLANCHARD
Claimant

APPEAL NO. 07A-UI-10141-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DONOVAN ELECTRIC
Employer

OC: 09/30/07 R: 01
Claimant: Respondent (2)

Section 96.4-3 - Able and Available for Work
Section 96.3-7 - Overpayment

STATEMENT OF THE CASE:

Donovan Electric (employer) appealed an unemployment insurance decision dated October 31, 2007, reference 01, which held that Donald Blanchard (claimant) was eligible for unemployment insurance benefits. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 19, 2007. The claimant participated in the hearing. The employer participated through Linda Johnson, Office Manager. Based on the evidence, 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:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time electrician on October 9, 2006. He sustained a work-related accident on January 4, 2007 and had to have rotator cuff surgery in April 2007. The claimant was reportedly released without restrictions from his shoulder injury at the end of August 2007. However, he was unable to return to work due to hand problems. The claimant contends he suffered a work-related injury of carpal tunnel but the injury was denied as work-related since it is a repetitive work injury and the claimant had not been working. He was released without restrictions as of today, November 19, 2007.

The claimant filed a claim for unemployment insurance benefits effective September 30, 2007 and has received benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the

record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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(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 claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). He was released to return to work without restrictions from his work-related injury at the end of August 2007. However, he had restrictions from a non-work-related injury that prevented him from working. The claimant did not meet the availability requirements of the law from September 30, 2007 through November 17, 2007. Benefits are denied during that seven-week period.

Iowa Code § 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

DECISION:

The unemployment insurance decision dated October 31, 2007, reference 01, is reversed. The claimant was not able and available to work from September 30, 2007 through November 17, 2007. The claimant is overpaid benefits in the amount of \$1,800.00.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css