

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CLAYTON D BOYERT
1922 E 38TH ST
DAVENPORT IA 52807-1161

L A LEASING INC
SEDONA STAFFING
612 VALLEY DR
MOLINE IL 61265

Appeal Number: 06A-UI-04622-JTT
OC: 03/26/06 R: 04
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4(3) – Able and Available for Work

STATEMENT OF THE CASE:

Claimant Clayton Boyert filed a timely appeal from the April 19, 2006, reference 02, decision that disqualified him for benefits because he was not able to work. After due notice was issued, a hearing was held on May 15, 2006. Mr. Boyert participated and presented additional testimony through his girlfriend, Stephanie Latcham. Unemployment Insurance Benefits Administrator Collene McGuinty represented Sedona Staffing. Exhibit A was received into evidence.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Clayton Boyert established a claim for benefits that was effective March 26, 2006. On March 23, Mr. Boyert seriously injured his left hand while engaging in self-employment auto mechanic

work. On March 29, Mr. Boyert underwent surgery to reattach a tendon in his left hand. Mr. Boyert is left-handed. On April 4, Sedona Staffing made contact with Mr. Boyert for the purpose of recalling him to an assignment. Mr. Boyert indicated at that time that he had seriously injured his hand, expected to go through weeks of therapy and was unable to perform the duties of his former assignment. The Sedona Staffing representative advised Mr. Boyert that he would not be considered for another assignment until he was granted a full release without restrictions and was able to use both of his hands. Mr. Boyert acknowledges that he is unable to perform many tasks because of the situation with his hand. Mr. Boyert does not know when he will be able to return to work. Mr. Boyert met with his doctor the day before the hearing and understands that he has "a long way to go" before he regains use of his left hand. Mr. Boyert continues to participate in physical therapy. In an effort to secure unemployment insurance benefits, Mr. Boyert secured a note from his doctor on May 8. The note indicates that Mr. Boyert is "Ok for ® handed work only."

The question is whether the evidence in the record establishes that Mr. Boyert has been able and available for work since establishing his claim and whether he is able and available for work at this time. It does not.

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 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 24.22(1)a, b 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customer occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

The evidence in the record establishes that the labor Mr. Boyert has to offer in the labor market is physical labor. The evidence in the record establishes that Mr. Boyert has not been able to perform such work since he established his claim for benefits. The evidence further establishes that Mr. Boyert continues to be unable to perform such work, due to a continued inability to use his dominant hand. Because Mr. Boyert is not able to work, Mr. Boyert is not eligible for unemployment insurance benefits. Mr. Boyert will continue to be disqualified for benefits until he provides Iowa Workforce Development proof that he able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which he resides.

DECISION:

The Agency representative's decision dated April 19, 2006, reference 02, is affirmed. The claimant is disqualified for benefits because he has not been able to work since establishing his claim. The claimant will continue to be disqualified for benefits until he provides proof to Iowa Workforce Development that he is able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which he resides.

jt/kkf