

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ADAM L KALWISHKY**  
Claimant

**APPEAL NO. 13A-UI-08636-JT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LARRY'S WINDOW SERVICE INC**  
Employer

**OC: 06/30/13**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Adam Kalwishky filed a timely appeal from the July 22, 2013, reference 02, decision that denied benefits for the three-week period of June 30, 2013 through July 20, 2013 based on an agency conclusion that he was unable to work during those weeks. After due notice was issued, an in-person hearing was started on September 17, 2013 and concluded on September 20, 2013. Mr. Kalwishky participated. Attorney Katie Ervin Carlson represented the employer and presented testimony through Travis Herman, Chris Dornbusch, and Carl O'Connor. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-08635-JT. Exhibits 1 through 18 and A through E were received into evidence.

**ISSUE:**

Whether the claimant was able and available for work during the three-week period of June 30, 2013 through July 20, 2013.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Adam Kalwishky established a claim for unemployment insurance benefits that was effective June 30, 2013. On that date, Mr. Kalwishky was injured while playing softball. On July 2, 2013, Mr. Kalwishky sought medical evaluation and treatment for his injury. A doctor diagnosed Mr. Kalwishky with a pinched nerve in his thigh. A doctor provided Mr. Kalwishky with a medical release that restricted Mr. Kalwishky to lifting no more than ten pounds for three weeks from July 2, 2013. The doctor also referred Mr. Kalwishky for physical therapy. The doctor also directed Mr. Kalwishky to cease his involvement in softball and other similarly taxing activity. Mr. Kalwishky is 6'4" tall and weighs 320 pounds.

Mr. Kalwishky began his job search during the week that ended July 6, 2013. During that week, Mr. Kalwishky applied at a screen printing enterprise for work that would have most likely exceeded his lifting restriction. He also applied at CDS Global.

During the week that ended July 13, Mr. Kalwishky applied for two jobs that he saw on craigslist.com. Mr. Kalwishky later concluded that the jobs were most likely a scam.

During the week that ended July 20, Mr. Kalwishky applied to become a grounds keeper at a golf course. The work would most likely have exceeded his ten-pound lifting restriction. During that same week, Mr. Kalwishky applied for a sales position.

Mr. Kalwishky's job search was somewhat hindered by the fact that he did not have an updated résumé at the time he established his claim for benefits. Mr. Kalwishky did not update his résumé until mid-August.

## **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 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 and (2) provide:

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.

(2) 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 weight of the evidence indicates that Mr. Kalwishky did not meet the able and available requirements during the three-week period of June 30, 2013 through July 20, 2013. During that period, Mr. Kalwishky had a ten-pound lifting restriction, had a pinched nerve in his leg, and had been referred to physical therapy. During that same period, Mr. Kalwishky did not have an updated résumé and confined his job search, by-and-large to positions he saw advertised on craigslist.com. Some of those advertised positions were not for bona fide employment. The grounds keeping and screen printing jobs likely exceeded Mr. Kalwishky's lifting restriction. Mr. Kalwishky was not eligible for benefits for the three-week period of June 30, 2013 through July 20, 2013.

**DECISION:**

The agency representative's July 22, 2013, reference 02, decision is affirmed. The claimant did not meet the able and available requirements during the three-week period of June 30, 2013 through July 20, 2013. The claimant is not eligible for benefits for that period.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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