

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WADE L CURRY**  
Claimant

**APPEAL NO: 07A-UI-08758-LT**

**ADMINISTRATIVE LAW JUDGE  
AMENDED DECISION**

**LABOR READY MIDWEST INC**  
Employer

**OC: 08/05/07 R: 03  
Claimant: Respondent (4)**

Iowa Code § 96.4(3) - Able and Available  
Iowa Code § 96.3(7) - Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the September 7, 2007, reference 03, decision that allowed benefits. After due notice was issued, a telephone conference hearing was held on October 15, 2007. Claimant did not participate. Employer participated through Rebecca Dripps.

**ISSUE:**

The issue is whether claimant is able to and available for work effective August 5, 2007.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time temporary sand blaster at Clipper from December 6, 2006 until June 30, 2007 when he had a non-work-related injury from going to a concert and was off work with restrictions. On or after September 1 he provided a medical release without restrictions and was returned to work at the same assignment.

The claimant has received unemployment benefits since filing a claim with an effective date of August 5, 2007.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work and available for work the four-week period ending September 1, 2007.

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 24.22(1)a 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.

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.

Inasmuch as the medical condition was not work-related and the treating physician had not released the claimant to return to work without restriction until or after September 1, the claimant has not established his ability to work. Employer is not obligated to accommodate a non-work-related medical condition, thus until claimant is released to perform his full work duties, he is not considered able to or available for work until September 2, 2007. Since he was returned to work at his previous assignment upon his full release, he would not be eligible for benefits at that point until another event (separation, layoff, etc.) takes place.

The administrative law judge further concludes claimant has been overpaid benefits.

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 leave of absence period made him ineligible, 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 representative's decision dated September 7, 2007 reference 03, is modified in favor of the appellant. The claimant did not quit but was not able to work and available for work for the four-week period ending September 1, 2007. Benefits are withheld until such time as the claimant has another qualifying event. The claimant is overpaid benefits in the amount of \$699.00. However, at this time, this amount has been set up on a separate issue.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/css/pjs