

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ZACHARY T WILKENING**  
Claimant

**APPEAL NO. 17A-UI-09253-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PROGRESSIVE FOUNDRY INC**  
Employer

**OC: 08/13/17**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Zachary Wilkening filed a timely appeal from the September 5, 2017, reference 06, decision that denied benefits effective August 13, 2017, based on an agency conclusion that Mr. Wilkening was unable to work due to injury. After due notice was issued, a hearing was held on September 27, 2017. Mr. Wilkening participated. The employer did not register a telephone number for the hearing and did not participate. Exhibit A was received into evidence. The administrative law judge took official notice of the following agency administrative records: KCCO, DBRO, the September 5, 2017, reference 01, decision and the September 15, 2017, reference 08, decision.

**ISSUES:**

Whether Ms. Wilkening has been able to work and available for work since establishing the unemployment insurance claim for benefits that was effective August 13, 2017.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Zachary Wilkening established an original claim for benefits that was deemed effective August 13, 2017. Mr. Wilkening continued the claim for benefits for five weeks and discontinued the claim following the benefit week that ended September 16, 2017. During the five-week period when Mr. Wilkening's unemployment insurance claim was active, Mr. Wilkening was focused on healing from a serious injury to his ankle, not on obtaining new employment.

Mr. Wilkening established his unemployment insurance claim in response to an August 18, 2017 discharge from full-time employment at Progressive Foundry. Mr. Wilkening had been a maintenance employee and machine operator at Progressive Foundry. In February 2017, Mr. Wilkening was in a motor vehicle accident and suffered injury. In July 2017, Mr. Wilkening consulted an orthopedic specialist and was diagnosed with a talar neck fracture, a serious injury to his foot. The nature of the injury required that Mr. Wilkening not bear weight on his foot until the injury had healed to avoid restricting blood flow to his foot and to avoid permanent serious injury to his foot. In connection with the talar neck fracture diagnosis, the orthopedist restricted Mr. Wilkening to performing desk work. In addition, Mr. Wilkening was fitted with crutches and an orthopedic boot. Mr. Wilkening is 23 years old, is a high school graduate and has completed some college course work. Mr. Wilkening's work life has thus far involved performing physical

labor. Mr. Wilkening employment at Progressive Foundry ended when the employer concluded it could not accommodate his medical restriction.

For all but one day of the first week of the claim, the week that ended August 19, 2017, Mr. Wilkening was still employed by Progressive Foundry. Mr. Wilkening's \$517.00 in wages for that week far exceeded his \$149.00 unemployment insurance weekly benefit amount. Mr. Wilkening did not look for any other employment during the week that ended August 19, 2017.

Mr. Wilkening thereafter continued to focus on his recovery. He continued on crutches, in the orthopedic boot, and restricted to desk work until he was released from the medical restrictions on Wednesday, September 13 or Thursday, September 14, 2017.

During the five-week period when Mr. Wilkening's claim was active, he applied for just one job. On August 29, 2017, Mr. Wilkening applied for a full-time quick lube tech position at Beneventi Chevrolet. On September 21, 2017, Mr. Wilkening accepted a job offer from Beneventi Chevrolet. On September 25, 2017, Mr. Wilkening began the new full-time employment.

### **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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.22(2) 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.

(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 administrative law judge concludes that he has authority to adjudicate the able and available issues for the entire five-week period of the claim due to the partial, limited nature of the adjudication in the September 15, 2017, reference 08, decision and the week-by-week adjudication that applies to the able and available issues.

The evidence in the record establishes that Mr. Wilkening was not able to work and available for work within the meaning of the law during any of the five-week period of August 13, 2017 through September 16, 2017. For the first week of the claim, the week that ended August 19, 2017, Mr. Wilkening was still working full-time. For the remainder of the claim period, Mr. Wilkening did not engage in an active and earnest search for new employment, but instead focused on recovering from a serious injury that prevented him from performing work for which he was qualified. Mr. Wilkening is not eligible for benefits for the period of August 13, 2017 through September 16, 2017.

**DECISION:**

The September 5, 2017, reference 06 is affirmed. The claimant was not able to and/or available for work within the meaning of the law during the five-week period of August 13, 2017 through September 16, 2017. The claimant is not eligible for benefits for the five-week period.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs