

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLOS V TREJO

Claimant

APPEAL NO. 07A-UI-06588-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

USA HEALTHCARE – URBANDALE LLC

Employer

**OC: 05/20/07 R: 02
Claimant: Appellant (1/R)**

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Carlos V. Trejo (claimant) appealed a representative's June 28, 2007 decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was not willing to work the number of hours his occupations required. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 19, 2007. The claimant participated in the hearing. No one on behalf of Urbandale Health Care (employer) responded to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which the employer's witness/representative could be contacted to participate in the hearing. As a result, no one represented the employer. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to and available for work as of May 20, 2007?

FINDINGS OF FACT:

The claimant worked as a full-time maintenance employee for the employer. The claimant has had two surgeries on one knee because of arthritis. When the claimant returned to work, he had work restrictions. His restrictions included no bending, no twisting of his knee, no lifting over 15 pounds, no squatting, and he had to have the ability to sit when necessary. The claimant began experiencing a great deal of pain and asked the employer if he could work four hours a day instead of eight. The employer required the claimant to work eight hours a day. The claimant's work restriction did not indicate he should only work four hours a day.

After the claimant worked 40 hours during a week, he went back to a doctor because of the pain he experienced. When the claimant returned to work with a cane, the employer informed the claimant he could not work with a cane. The claimant asked the employer again if he could work just four hours a day. The employer declined this request because the claimant had been hired to work full time, not part time.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, he must be able to and available for work. Iowa Code § 96.4-3. The facts show that even though the claimant's physician did not restrict him to working part-time, the claimant only wanted to work four hours a day instead of eight hours. The claimant is not willing to work the number of hours required to work in the claimant's occupation. When this occurs, the law presumes a claimant is not available for work. 871 IAC 24.23(17). As of May 20, 2007, the claimant was not available to work and is not eligible to receive unemployment insurance benefits.

During the hearing the claimant indicated that his employment had ended with the employer. Therefore, the issue regarding the reasons for the claimant's employment separation is remanded to the Claims Section to investigate and issue a written decision if necessary.

DECISION:

The representative's June 28, 2007 decision (reference 02) is affirmed. The claimant is not eligible to receive benefits as of May 20, 2007, because he is not able or available to work the number of hours the employer hired him to work. The issue regarding the reasons for the claimant's employment separation is remanded to the Claims Section to investigate and issue a written decision if necessary.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw