

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEFFREY R JAKEL
Claimant

APPEAL NO. 14A-UI-02715-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LF STAFFING SERVICES INC
Employer

OC: 01/26/14
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated February 26, 2014, reference 03, that concluded the claimant was not able to and available for work. A telephone hearing was held on April 2, 2014. During the hearing, it was discovered that there was a second decision that the claimant appealed involving the same issue and the same employer but with a different account number. A decision was made to consolidate the two appeals for the purpose of hearing the case. A hearing was scheduled on 14A-UI-02715-SWT and 14A-UI-03183-SWT on April 15, 2014. The claimant participated in the hearing. Tracy Hart participated in the hearing on behalf of the employer.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The employer is a staffing company that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer under two account numbers, LF Staffing Services Inc (Account 303738) and ELS Of Florida Inc. (Account 531655) on several assignments from March 26, 2013, to September 27, 2013.

On September 25, 2013, the claimant worked on a one-day assignment at ABC Disposal. During his shift that day, he hurt his back dumping garbage. He reported that he had strained his back to Jim Clyde with the employer at the end of the day but told him he did not think it was serious. The claimant worked a one-day assignment on September 26 that involved holding a sign.

He worked a 12-hour shift at Fisher Printing on September 27. On September 30, the claimant was experiencing pain in his back and that evening he went to the emergency room. He was diagnosed with a stress fracture, given pain medication, and told to rest his back. The claimant called in and notified the employer that he was not able to work his next day's assignment at Fisher Printing.

On October 1, someone with the employer called the claimant and informed him that he needed to submit to a post-accident drug test. He did as he was instructed and was told the matter would be filed as a workers' compensation claim. The claimant completed a medical release for his medical records. He never saw a doctor again.

In a few weeks after the claimant's condition improved, he contacted the employer and asked if there was any work for him at that time. He was told there was nothing for him. He contacted Jim Clyde at least once afterward and again was told there was nothing available at that time. The claimant was not asked for a medical release.

The claimant filed a new claim for unemployment insurance benefits with an effective date of January 26, 2014. He did not have any restrictions on his ability to work at that time. The claimant has worked in the past as a truck driver, lumberyard associate, cashier, and glass company worker. For many years, he had his own computer sales and service business. He has been applying for work as a cashier, store clerk, and telemarketer and would be able to perform that work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code § 96.4-3. He was working temporary one-day work assignments. He completed his work assignments except for the one on October 1, for which he called in to report his absence. He never quit an ongoing work assignment.

I believe the claimant's testimony that he contacted the employer after his condition improved and was told there was no work available. He was not offered work and sought other employment. He never requested a leave of absence from the employer.

The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work as of January 26, 2014, without restrictions. There is work available in the labor market meeting that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated February 26, 2014, reference 03, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs