

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL E GOMEZ**  
Claimant

**APPEAL NO. 13A-UI-02858-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JC TOLAND PAINTING LLC**  
Employer

**OC: 01/22/12  
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 March 5, 2013, reference 01, that concluded he was not able to available for work effective November 18, 2012. A telephone hearing was held on April 9, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing with his representative, Katie Naset. No one participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

**ISSUE:**

Was the claimant able to and available for work?

**FINDINGS OF FACT:**

The claimant had worked as a painter for the employer from 2010 to November 9, 2012. He was hospitalized due to breathing problems from November 12 to November 15. When he was released from the hospital on November 15, he had no work restrictions from his doctor.

The claimant contacted his supervisor on November 18 about returning to work and was told that he was laid off due to lack of work and the supervisor would let him know when he could return back to work.

The claimant has called the employer regularly since November 18 and provided medical releases without any work restrictions but has not been allowed to return to work. He has been able and willing to work as a painter but the employer has not had work for him.

**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. 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 full-time work.

The claimant currently is classified as a claimant who is not required to search for work because he is temporarily laid off from his regular job. If the employer does not intend to call the claimant back to work, it should notify the Agency so his classification is changed to require him to search for another job.

**DECISION:**

The unemployment insurance decision dated March 5, 2013, reference 01, is reversed. The claimant is qualified to receive unemployment insurance benefits effective November 18, 2012, if he is otherwise eligible.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/css