

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GERALD J PINS

Claimant

APPEAL NO: 15A-UI-04077-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KLAUER DEVELOPMENT CORPORATION

Employer

OC: 01/14/15

Claimant: Appellant (4)

Section 96.4-3 – Able and Available
871 IAC 24.22(2)j – Leave of Absence

STATEMENT OF THE CASE:

Gerald J. Pins (claimant) appealed a representative's March 24, 2015 (reference 02) decision that concluded he was not qualified to receive unemployment insurance benefits in connection with Klauer Development Corporation (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 5, 2015. The claimant participated in the hearing and was represented by Natalia Blaskovich, Attorney at Law. Randy Klauer appeared on the employer's behalf and presented testimony from one other witness, Kris Freund. During the hearing, Claimant's Exhibits A and B were entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

Was there period of voluntary unemployment through a leave of absence?

FINDINGS OF FACT:

The claimant started working for the employer on June 20, 2001. He worked full time as a carpenter/foreman in the employer's commercial construction business. His last day of work was February 6, 2015.

On February 6, the claimant advised the employer that he was going to have a knee surgery on February 9, 2015, that he would be fully off work for two weeks, and that he would not be fully released without restrictions for four to six weeks. At no time did he make any assertion that the surgery on his knee, which was to remove a bursa, was due to a work-related condition. While he verbally indicated that his doctor suggested the condition was work related, he provided no medical documentation to that effect; in fact, he had consciously decided not to make a claim under workers' compensation.

On February 20, the claimant brought in a doctor's note releasing him with restrictions of no kneeling, crawling, climbing, or squatting. The claimant's normal duties involved those functions at least 60 to 70 percent of the time. On February 21, the employer informed the claimant that it did not have work available for him with those restrictions and that he could not return to work until those restrictions were lifted. The claimant asserted that he had previously been allowed to work with restrictions; however, the most significant period he was allowed to work with restrictions was in 2014 when he was under workers' compensation for a work-related shoulder injury and a week's period in late December 2010/early January 2011 when he had a moderate restriction of "limited walking."

On March 30, the claimant's doctor provided to him, and he provided to the employer, a medical release allowing him to return to work without any restrictions effective March 31. By March 31 the employer had hired a replacement, so when the claimant sought to return to work on March 31 the employer advised him that there was no work for him and that he was being permanently laid off.

REASONING AND CONCLUSIONS OF LAW:

For each week for which a claimant seeks unemployment insurance benefits, he must be able and available for work. Iowa Code § 96.4-3. In general, an employee who is only temporarily separated from his employment and is effectively on a leave of absence is not "able and available" for work during the period of the leave, as it is treated as a period of voluntary unemployment. Rules 871 IAC 24.22(2)j; 871 IAC 24.23(10).

The claimant's unemployment from February 9 through March 30 was due to him effectively being on a leave of absence due to a non-work-related medical issue. As the condition causing his temporary unemployment was not established as being due to the work, in order to be sufficiently well for the claimant to regain his eligibility status as being able and available for work, he must have a complete recovery to full work duties without restriction. *Hedges v. Iowa Department of Job Service*, 368 N.W.2d 862, 867 (Iowa App. 1985); Iowa Code § 96.5-1-d. The employer is not compelled to provide restricted duty work for employees except where it is established as having been work-related. For the period the claimant is seeking unemployment insurance benefits through March 30, he was under sufficient work restrictions as would preclude him from returning to his regular work duties. He is therefore not eligible to receive unemployment insurance benefits for that period.

However, he was released without restriction effective March 31, 2015 and is therefore able and available for work as of that date. Benefits are allowed as of the benefit week ending April 4, 2015, if the claimant is otherwise eligible.

DECISION:

The representative's March 24, 2015 (reference 02) decision is modified in favor of the claimant. The claimant was not able and available for work effective February 9 through March 30, 2015 and the claimant is not qualified to receive unemployment insurance benefits for that period. He became again able and available for work as of March 31 and benefits are allowed effective the benefit week ending April 4, 2015, if he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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