

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R SMITH
Claimant

APPEAL NO: 12A-UI-02582-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 01/22/12
Claimant: Appellant (4/R)

Iowa Code § 96.4(3) – Ability to and Availability for Work

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's February 26, 2013 determination (reference 01) that held he was ineligible to receive benefits from March 11 through July 7, 2012, because he had not been released by his physician to work. The claimant participated in the hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge finds the claimant is eligible to receive benefits as of May 27, 2012.

ISSUE:

When was the claimant released by his physician to return to work and available to work?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of January 22, 2012, when he was temporarily laid off from work. During the week of March 11, 2012, the claimant was hospitalized. He was in the hospital for 34 days.

In early May the claimant understood from the nurse who came to his home and his physical therapists that he could do light-duty work, such as pushing a broom, for 10 to 20 hours a week. As a result of this understanding, the claimant started filing weekly claims the week of April 28, 2012. The claimant had been working as a heavy equipment operator.

The claimant's treating physician, Dr. Clay Beggerly, evaluated the claimant on May 16, 2012. As a result of this evaluation, Dr. Beggerly released the claimant to full time work on May 30, 2012. The claimant continued filed weekly claims after he was released to full time work.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4(3). The law presumes a claimant is not available to work when he is in the hospital and is under a physician's care and has not been released as being able to work. 871 IAC 24.23(2) and (35).

The facts show that while the claimant was hospitalized he did not file any weekly claims for the weeks ending March 17 through April 21, 2012. He reopened his claim the week of April 22, 2012, because he understood he could work part time. The claimant's physician had not released him to work until May 30, 2012. When the claimant released to work, he was released to work full time. Since the claimant was able to work full time the majority of the week ending June 2, he is eligible to receive benefits as of May 27, 2012.

An issue of overpayment of benefits the claimant received for the weeks ending April 28 through May 26, 2012, will be remanded to the Claims Section to determine.

DECISION:

The representative's February 26, 2013 determination (reference 01) is modified in the claimant's favor. The claimant was not eligible to receive benefits for the weeks ending March 17 through April 21 because he was in the hospital. He did not file any weekly claims for these weeks. The claimant was not eligible to receive benefits for the weeks ending April 28 through May 26, 2012. As of May 27, 2012, the claimant established he was available for work and is eligible to receive benefits as of this date.

An issue of overpayment of benefits the claimant received for the weeks ending April 28 through May 26, 2012, is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css