

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE RAYMUNDO**

Claimant

**APPEAL NO. 10A-UI-14329-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FBG SERVICE CORPORATION**

Employer

**OC: 08-15-10**

**Claimant: Appellant (2R)**

Iowa Code § 96.4(3) – Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 6, 2010, reference 02, decision that denied benefits. After due notice was issued, a hearing was held on November 29, 2010. The claimant did participate with the assistance of interpreter Olga Esparza and was represented by Charles Pierce, Attorney at Law and observed by volunteer law clerk Jocelyn Berbaum. The employer did not participate. Claimant's Exhibit A was entered and received into the record.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a janitor full time beginning in 2008 through April 16, 2010 through April 19, 2010 when he stopped working. It is not clear whether the claimant is or is not still employed by this employer and no fact-finding interview has been held on any permanent separation from employment.

The claimant has been diagnosed as suffering from asthma that has either been caused by or is aggravated by the chemicals he is required to work around as a janitor. One of the claimant's treating physicians, a Dr. Royyuru, has determined that as of April 16, 2010 the claimant could no longer work around any cleaning chemicals. She also determined that the claimant has permanent work restriction due to his environmental allergies and persistent asthma and needs to refrain from being around chemicals in his job. The employer has not accommodated the claimant's work restrictions that prohibit him from being around chemicals.

He is seeking workers' compensation benefits from the employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective August 15, 2010.

Iowa Code § 96.4-3 provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

871 IAC 24.23(1) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

871 IAC 24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the injury is considered work-related for the purposes of unemployment insurance benefits only and the treating physician has released the claimant to return to work, even with restrictions the claimant has established his ability to work. Because the employer had no work available or was not willing to accommodate the work restrictions, benefits are allowed.

**REMAND:**

The separation issue delineated in the findings of fact is remanded to the claims section for an initial review and determination.

**DECISION:**

The representative's decision dated October 6, 2010 (reference 02) is reversed. The claimant is able to work and available for work effective August 15, 2010. Benefits are allowed, provided he is otherwise eligible.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs