

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSE W KILLEN**

Claimant

**APPEAL NO. 08A-UI-10087-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ABC SUPPLY CO INC**

Employer

**OC: 09/14/08 R: 02  
Claimant: Appellant (2)**

Iowa Code § 96.4(3) - Able and Available

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the October 27, 2008, reference 03, decision that denied benefits. After due notice was issued, a telephone conference hearing was held on November 14, 2008. Claimant participated. Employer participated through Darcy Mindham. Employer's Exhibit 1 was received.

**ISSUE:**

The issue is whether claimant is able to and available for work effective September 14, 2008.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was hired as a full-time truck driver for delivery of shingles and siding on November 16, 2007 and remains employed but on medical leave with a requirement for a full medical release without restriction before he will be allowed to return to work. He was injured on the job February 19, 2008, when he fell four or five feet off the loading dock onto his side. He reported the injury to Greg Corwin, manager, and James Mason, yard worker, who helped him up after the fall. He told his supervisor Mike Taylor about the injury and Taylor knew claimant was having continuing to have pain and helped claimant unload shingles on August 15 and sent a yard worker to help with another load. He had asked Taylor for permission to see the company doctor, who said he did not have time to do more than the DOT physical and he would have to set up another appointment. The problems with his neck and lower back and numbness in his left hand progressively got worse until August 19, 2008, when he sought treatment from Lori Miller, D.O., who restricted him from lifting, pulling, or pushing over ten pounds and any climbing or bending. Claimant gave the note to Taylor, who told him he needed to know if he could do exactly what he was hired to do, including throwing 90-pound bundles of shingles. He went back to Dr. Miller, who took him off of work pending an MRI, which showed a recent injury to his neck and an undetermined date of injury to his back. Dr. Miller then released him again on September 19, 2008, with the same restrictions and referred him to Dr. Halaven, a neurosurgeon, who referred him to pain management and physical therapy and prescribed an anti-inflammatory medication. Claimant presented Taylor with the September 19 release and was informed employer did not have any light duty work available, either answering phones or

working the counter. He has held a truck driving job for another employer where he was not responsible for lifting, pushing, or pulling more than ten pounds. The employer's workers' compensation insurance carrier denied the claim as a preexisting injury. Claimant did have a cortisone shot in January and again in February 2008 because of his earlier back injury pain, but the work injury a week later caused pain in his neck, numbness in his left hand and arm, and pain in his back that is located higher on his back than was the pain from the previous injury.

### **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

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.

**DECISION:**

The representative's decision dated October 27, 2008, reference 03, is reversed. The claimant is able to work and available for work effective September 14, 2008. Benefits are allowed, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw