

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

REDZO BEGANOVIC
Claimant

APPEAL NO: 11A-UI-05608-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

**OC: 12/19/10
Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Redzo Beganovic (claimant) appealed an unemployment insurance decision dated April 25, 2011, reference 03, which held that he was not eligible for unemployment insurance benefits because he was not medically able to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 25, 2011. The claimant participated in the hearing with representative Jon Geyer. His wife, Ismeta Beganovic, was in attendance but did not participate. Jaja Pavetic Dickey interpreted on behalf of the claimant. The employer participated through Deborah Sgambagi, Human Resources Manager. Claimant's Exhibit A was admitted 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:

The issue is whether the claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a full-time tire builder on March 17, 2000. He sustained a work-related injury and was placed on a lifting restriction of one pound on December 7, 2010. The employer allowed him to do paperwork until March 4, 2011 but can no longer accommodate him even though he is still an employee. The claimant began receiving permanent partial disability payments on March 9, 2011 in the amount of \$823.00 per week.

The claimant testified that he is able and available to work but has never worked in any other capacity under his current work restrictions.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively

seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. See 871 IAC 24.22(1)(a).

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".

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant's physician has released him to return to work but that is not the end of the analysis. He has a one pound lifting restriction and other than the work the employer created for him from December 7, 2010 through March 4, 2011, the claimant has never worked within his current medical restrictions. It appears that he has only worked in manual labor positions but cannot perform these types of jobs due to his extreme lifting restriction.

It is not sufficient for the claimant to merely say he is able to work when he cannot provide any evidence of any other job that he has performed or can perform within his medical restrictions. The claimant has not met his burden and does not meet the availability requirements of the law as of the week ending March 12, 2011.

DECISION:

The unemployment insurance decision dated April 25, 2011, reference 03, is affirmed. The claimant does not qualify for unemployment insurance benefits at this time.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css