

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID R HATTON
Claimant

APPEAL NO. 14A-UI-01525-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPEE-DEE DELIVERY SERVICE INC
Employer

OC: 01/26/14
Claimant: Respondent (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated January 31, 2014, reference 02, which held that the claimant was eligible for unemployment insurance benefits. After due notice, a hearing was held on March 20, 2014, by telephone conference call. The claimant failed to respond to the hearing notice and did not participate. The employer participated by Aaron Lynch, human resources/safety. The record consists of the testimony of Aaron Lynch. Official notice is taken of agency records.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides delivery services for packages and freight. The claimant was hired on April 22, 2013, as an LTL driver, which requires a CDL. The claimant sustained a work-related injury on November 15, 2013. He had pain in his hip. He had a relapse of that injury on January 13, 2014. The claimant had been off work or on light duty ever since the relapse. He is still employed by the employer. He receives wages from the employer when he is able to work and receives either temporary total disability or temporary partial disability benefits when he is unable to work.

The claimant's current restrictions are a ten pound lifting restriction with no squatting and no ladders.

The claimant established an original claim for unemployment insurance benefits with an original claim date of January 26, 2014. He filed a weekly claim for the week ending February 1, 2014, and the week ending February 8, 2014. The claimant did not receive benefits for either of those weeks. The agency records show that he was disqualified as not being able and available for work.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

The claimant is not eligible to receive unemployment insurance benefits. He is not able and available for work. The evidence established that the claimant has, since January 13, 2014, received either wages or temporary total disability or temporary partial disability benefits from the worker's compensation carrier. Unemployment insurance benefits are not designed to supplement the receipt of wages and worker's compensation benefits. The claimant is not eligible for benefits for the weeks ending February 1, 2014, and February 8, 2014.

One of the issues listed on the hearing notice was overpayment of benefits. There is no overpayment issue since the claimant has not received any unemployment insurance benefits.

DECISION:

The decision of the representative dated January 31, 2014, reference 02, is reversed. Unemployment insurance benefits are denied effective January 26, 2014.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs