

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDWARD C AZAR
Claimant

APPEAL NO: 12A-UI-09701-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MC DONALD'S RESTAURANT
Employer

OC: 06/10/12
Claimant: Appellant (2)

Iowa Code § 96.4(3) – Able and Available

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's August 3, 2012 determination (reference 02) that held him ineligible to receive benefits as of June 10, 2012, because he was not able to work. The claimant participated in the hearing with his witnesses, Marsha Mariner and Patricia Thompson. Scott Hecker appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is eligible to receive benefits as of June 10, 2012.

ISSUE:

As of June 10, 2012, is the claimant able to and available for work?

FINDINGS OF FACT:

Before the claimant established his claim during the week of June 10, 2012, he worked for the employer - grilling meat and making sandwiches. In late April the claimant learned he had a hernia. His physician released him to work, but restricted him from lifting no more than ten pounds. The employer received this work restriction in early May and accommodated these restrictions.

After the claimant was unable to work as scheduled because of the pain he experienced, the employer did not schedule the claimant to work after May 20. The employer's management finally told the claimant to contact the employer after he had his surgery and was released to work. Between May 20 and June 10, the claimant had a doctor's appointment. At this appointment the claimant received new medication that controlled the pain he experienced so he had been unable to work as scheduled.. The claimant was able to work a regular or normal shift after he started the new medication. The claimant did not contact the employer after his pain was controlled because the employer told him to contact the employer after his surgery. The claimant was able to work and perform his job for the employer after his physician prescribed new medication to control his pain.

The claimant has filed weekly claims since June 10, 2012. The claimant has work experience in construction, cashier and fast food. With a ten-pound weight restriction the claimant is unable to

do construction work. The claimant's primary work experience is with fast food. Since June 10, 2012, the claimant has been looking for fast food and cashier jobs.

As of September 4, the claimant has not had any corrective surgery, but plans to have it.

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 facts establish that with his ten-pound weight restriction, the claimant was able to perform his work – grilling and making sandwiches. The employer stopped scheduling the claimant because of attendance issues he had before his physician gave him new medication to control his pain. Since the claimant's primary work experience is in fast food, he established that he is able to and available to work in meaningful employment in which he has experience. As of June 10, 2012, the claimant is eligible to receive benefits.

When the claimant has surgery, he will not be eligible to receive benefits until his physician releases him to work and he establishes he is again able to and available for work.

DECISION:

The representative's August 3, 2012 determination (reference 02) is reversed. As of June 10, 2012, the claimant is able to and available for work in which he has work experience. As of June 10, 2012, the claimant is eligible to receive benefits, provided he meets all other eligibility requirements.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css