

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ALLEN L PHELPS**  
Claimant

**APPEAL NO: 14A-UI-03681-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OLYMPIC STEEL IOWA INC**  
Employer

**OC: 03/02/14**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**PROCEDURAL STATEMENT OF THE CASE:**

The claimant appealed a representative's March 28, 2014 determination (reference 01) that held him ineligible to receive benefits as of March 2, 2014, because he had been injured and was unable to perform his job. The claimant participated at the April 28 hearing. Dana Cheever, the safety manager, and Josh Erickson, a new maintenance supervisor, 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 not eligible to receive benefits as of March 2, 2014.

**ISSUE:**

Is the claimant able to and available for work as of March 2, 2014?

**FINDINGS OF FACT:**

The claimant started working for the employer as a third shift maintenance employee in April 2012. As a maintenance employee, his job required him to be able to lift 50 pounds or more and to work more than 40 hours a week.

The claimant was in an automobile accident on February 17, 2014. The claimant worked after the accident, but on February 28, 2014, he gave the employer a work restriction that he could not work more than 40 hours a week and could not lift more than 25 pounds.

The employer does not accommodate work restrictions for a non-work-related injury. Even though the claimant may not on regular or daily basis lift more than 25 pounds, there were times his job required him to lift more than 25 pounds. The employer could not accommodate his work restrictions and asked if he wanted to go on FMLA.

The claimant completed and turned in the FMLA paperwork. The claimant was determined to be FMLA eligible. As of April 28, the employer considers the claimant an employee who is on a medical leave of absence, FMLA. As of April 28, the claimant's work restrictions have not changed. The claimant expects his physician will release him to work the week of May 12 without any work restrictions.

The claimant established a claim for benefits during the week of March 2, 2014. The claimant has filed claims for the weeks ending March 8 through May 3, 2014.

**REASONING AND CONCLUSIONS OF LAW:**

Each week a claimant files a clam for benefits, he must be able to and available for work. Iowa Code § 96.4(3). The law presumes a claimant is not available for work when he requests and is granted a leave of absence. A leave of absence is considered a period of voluntary unemployment. 871 IAC 24.23(10.) Since the claimant completed and returned FMLA paperwork, he requested a leave of absence. As a result, he is not eligible to receive benefits until he requests that his leave of absence end and establishes that he is able to and available to this job without any work restrictions.

**DECISION:**

The representative's March 28, 2014 determination (reference 01) is affirmed. As of March 2, 2014, the claimant is not eligible to receive benefits because he is on an approved leave of absence.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css