

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES D MCPEEK
Claimant

TCM ENTERPRISES INC
Employer

APPEAL 18A-UI-10942-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/23/18
Claimant: Respondent (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The employer filed an appeal from the October 19, 2018, (reference 01) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on November 26, 2018. Claimant participated. Employer participated through general manager Kimberly McCormick. Employer's Exhibit 1 was received.

ISSUE:

Is the claimant able to work and available for work effective September 23, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in June 2015 as a mover/driver. In June 2017, claimant hurt his back while moving two couches and an arcade game. Claimant informed the office employees of what occurred, but did not file a workers' compensation claim at that time. Claimant saw a chiropractor who issued work restrictions periodically thereafter. Claimant did not always follow the work restrictions because he needed money to support his family. In summer 2018 the workload increased and claimant's back pain increased as well.

On August 14, 2018, claimant's personal medical care provider issued a lifting restriction of 30 pounds. Claimant's personal medical provider believes the injury is work-related. Claimant attended work up until August 22, 2018, when employer told him it could not accommodate the restriction.

Claimant filed a claim for workers' compensation benefits. There has been no determination on claimant's claim for workers' compensation benefits at this point. Claimant has not been evaluated by any medical care provider other than his own.

Employer still considers claimant to be an employee.

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 section 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".

Iowa Admin. Code r. 871-24.23(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 medical practitioner and has not been released as being able to work.

In this case, claimant has established his injury is work related. Claimant testified he injured his back on the job and reported the injury immediately thereafter. Claimant credibly testified the job has exacerbated the injury during the last year and that his personal medical care provider believes the injury is work related. Claimant has filed a claim for workers' compensation benefits that has not yet been determined. Employer had only second hand information regarding claimant's injury. Therefore, I find claimant established the injury is work related for purposes of unemployment insurance benefits only.

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 19, 2018 (reference 01) is affirmed. The claimant is able to work and available for work effective September 23, 2018. Benefits are allowed, provided he is otherwise eligible.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
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Decision Dated and Mailed

cal/scn