

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JERRY L FAIDLEY**  
Claimant

**APPEAL NO. 13A-UI-07117-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UNITED PARCEL SERVICE**  
Employer

**OC: 05/19/13**  
**Claimant: Appellant (2)**

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

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the June 14, 2013, (reference 01) unemployment insurance decision that denied benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 23, 2013. Claimant participated. Employer participated through area human resources manager, Mike Arndt and occupational health supervisor, Terra Vellema. Claimant's Exhibit A was received.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant is employed full time as a preloader/loader. His last day of work was February 11, 2013 due to an undisputed work-related back and hip injury. He reached maximum medical improvement (MMI) on March 3, 2013 and with permanent work restrictions of minimal lifting above shoulder height and no lifting greater than 70 pounds. (Claimant's Exhibit A) The jobs at UPS he can do when and if they become available are car washer, porter, clerk and janitor. He must bid on open jobs by the terms collective bargaining agreement.

**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 § 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".

871 IAC 24.23(1) and (35) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(1) An individual who is ill and presently not able to perform work due to illness.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

Inasmuch as the injury is considered work related 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 has no work available, benefits are allowed.

**DECISION:**

The representative's decision dated June 14, 2013 (reference 01) is reversed. The claimant is able to work and available for work effective May 19, 2013. Benefits are allowed, provided he is otherwise eligible.

---

Dévon M. Lewis  
Administrative Law Judge

---

Decision Dated and Mailed

dml/css