

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON Z HANKINS**  
Claimant

**APPEAL NO. 16A-UI-12406-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**H&H TRAILERS LLC**  
Employer

**OC: 12/13/15**  
**Claimant: Appellant (1)**

Iowa Code section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Aaron Hankins filed a timely appeal from the November 9, 2016, reference 01, decision that denied benefits effective October 23, 2016, based on an agency conclusion that Mr. Hankins was unable to perform work due to injury. After due notice was issued, a hearing was held on December 7, 2016. Mr. Hankins participated. The employer did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Exhibits A and B were received into evidence.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing the additional claim for benefits that was effective October 23, 2016.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Aaron Hankins is employed by H&H Trailers, L.L.C. as a full-time welder. Mr. Hankins began the employment in 2014 and last performed work for the employer on September 19, 2016. On September 20, 2016, Mr. Hankins injured his left shoulder in connection with off-duty horseplay. Mr. Hankins tore the ring of cartilage that holds his shoulder in place. Mr. Hankins is right handed. Mr. Hankins sought medical evaluation and treatment and was fitted with a shoulder immobilizer that secured his left bicep to his rib cage and that secured his left wrist to the right side of abdomen. Though Mr. Hankins asserts there was welding work that he could perform one-handed, a reasonable person would conclude otherwise. The employer declined to provide work that would accommodate Mr. Hankin's inability to use his left arm. Mr. Hankins has remained off work ever since. Mr. Hankins underwent surgery on his shoulder on November 1, 2016. The surgeon took Mr. Hankins completely off work at that time. Mr. Hankins most recently returned to the doctor on November 14, 2016. In connection with that appointment, Mr. Hankins obtained a medical release that said he could return to work on light-duty status with no use of his *right* arm. Mr. Hankins reports that the reference to his right arm is erroneous and that the note should reference his left arm. Mr. Hankins remains attached to the employment at H&H Trailers, but is in an approved leave status.

Mr. Hankins established an additional claim for unemployment insurance benefits that was effective October 23, 2016. H&H Trailers is the sole base period employer.

### **REASONING AND CONCLUSIONS OF LAW:**

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.22(2) 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.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of

services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(1) provides:

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.

The weight of the evidence in the record establishes that Mr. Hankins has not been able to work or available for work within the meaning of the law since he established the additional claim for benefits that was effective October 23, 2016. The weight of the evidence establishes that Mr. Hankins has at all relevant times been attached to employment that requires use of both arms and hands. Mr. Hankins has been without the use of his left arm since he established the additional claim for benefits and, therefore, cannot be deemed able to work or available for work within the meaning of the law. This disqualification is effective October 23, 2016 and remains in effect.

**DECISION:**

The November 9, 2016, reference 01, is affirmed. The claimant has been unable to work due to injury since he established the additional claim for benefits that was effective October 23, 2016. The claimant is job-attached, but has not been able to work or available for work within the meaning of the law since he established the additional claim for benefits. Effective October 23, 2016, the claimant is ineligible for benefits. This disqualification remains in effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs