

## UNEMPLOYMENT INSURANCE APPEALS

**RONALD M MACKEN**  
Claimant

**BES-T INVESTMENTS LLC**  
Employer

**APPEAL NO. 17A-UI-05063-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/09/17**  
**Claimant: Appellant (2)**

Iowa Code § 96.4-3 – Able and Available  
871 IA Admin. Code § 24.23(10) – Leave of Absence

### **STATEMENT OF THE CASE:**

Claimant filed an appeal from a decision of a representative dated May 4, 2017 reference 01, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on May 31, 2017. Claimant participated personally. Employer participated by Joel Smith and Mike Maggert. Claimant's Exhibits A-D were admitted into evidence.

### **ISSUES:**

Whether claimant is able and available for work?

Whether claimant is on an approved leave of absence?

### **FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant was injured at work on January 21, 2015. Claimant was in close contact with employer for the first week after his injury, and then had periodic contacts with the employer later in 2015. Claimant has remained in close contact with employer's workers compensation carrier throughout his surgery and recovery.

In April of 2017 employer's workers compensation carrier stated it was issuing a PPD impairment, ending its involvement with the case. On May 3, 2017 claimant received a release to return to work with lifting limits imposed. The only job that employer had for claimant was for reduced hours and wages. Claimant declined to take this job.

### **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.

Inasmuch as the injury was work-related and the treating physician has released the claimant to return to work, albeit in a job that has weight restrictions, the claimant has established the ability to work as of the date that claimant received the doctor's note allowing return to work. The offer to hold a sign outside for fewer hours and at lower wages than claimant had been earning at the time of his injury is not deemed to be a work refusal as it was not offered for equal pay and hours. Benefits shall be allowed effective May 3, 2017.

**DECISION:**

The decision of the representative dated May 4, 2017, reference 01 is reversed. Claimant is eligible to receive unemployment insurance benefits, effective May 3, 2017, provided claimant meets all other eligibility requirements.

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Blair A. Bennett  
Administrative Law Judge

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Decision Dated and Mailed

bab/scn