

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES B MORRISON
Claimant

APPEAL NO. 10A-UI-05662-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 10/18/09
Claimant: Appellant (2)

Section 96.4-3 - Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated April 5, 2010, reference 02, that concluded he was unable to perform work. A telephone hearing was held on May 27, 2010. The parties were properly notified about the hearing. The claimant participated in the hearing. No one participated in the hearing on behalf of the employer. Exhibit A was admitted into evidence at the hearing.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant filed a claim for unemployment insurance benefits effective October 18, 2009, after his employment as an assistant manager at Hy-Vee ended. He had fractured a neck vertebra in an off-duty accident on September 18, 2009. He was excused from work by his doctor through October 9, 2009, when he was released to return to work without restrictions. He was required to wear a neck brace to avoid reinjuring his neck.

On the day he was to return to work October 11, the claimant had a car accident after swerving to avoid a deer, which totaled his vehicle and caused his neck to be pain and stiff. He went to the doctor's office. The physician's assistant who treated him diagnosed him with muscle spasms in his neck and prescribed a muscle relaxant. He was given a work excuse stating that he had aggravated his neck condition and could return to work when his condition was better. This was the last time the claimant saw a doctor. The painful and stiffness that caused the claimant to go to the doctor's office subsided as of October 18 and he was no longer taking medication. Since his employment at Hy-Vee had ended, the claimant began looking for work based on his past work experience as a restaurant employee or bar employee. He has a two-year's associate degree and experience as a bar and restaurant manager. His neck condition would have prevented him from performing this work.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the claimant is able to work, available for work, and earnestly and actively seeking work as required by the unemployment insurance law in Iowa Code section 96.4-3. The unemployment insurance rules provide that a person must be physically able to work, not necessarily in the individual's customary occupation, but in some reasonably suitable, comparable, gainful, full-time endeavor that is generally available in the labor market. 871 IAC 24.22(1)b. The evidence establishes that the claimant was able to perform gainful work, just not work that requires heavy lifting. There is work available in the labor market meeting such restrictions that the claimant is qualified to perform, and the claimant has been actively looking for such work in compliance with the requirements of the law.

DECISION:

The unemployment insurance decision dated April 5, 2010, reference 02, is reversed. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs