

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES M FAULKNER
Claimant

DES MOINES PERFORMING ARTS
Employer

APPEAL NO. 24A-UI-03792-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/03/24
Claimant: Appellant (1)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

On April 12, 2024, James Faulkner (claimant) filed a timely appeal from the April 2, 2024 (reference 03) decision that denied benefits effective March 3, 2024, based on the deputy's conclusion that the claimant was unable to work due to injury. After due notice was issued, a hearing was held on May 1, 2024. Claimant participated. Bill Pinegar represented the employer. Exhibits A through D were received into evidence. The administrative law judge took official notice of the following agency administrative records: KCCO, DBRO, KPYX, WAGE-A and the claimant's March 28, 2024 statement to the IWD Benefits Bureau deputy.

ISSUES:

Whether the claimant was able to work and available for work for the period beginning March 3, 2024.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

James Faulkner (claimant) established an original claim for benefits that was effective March 3, 2024. As of May 8, 2024, the claimant had filed weekly claims for each of the eight weeks between March 3, 2024 and April 27, 2024. The claimant has not received benefits in connection with the weekly claims.

The claimant is a union stagehand. Iowa Workforce Development has categorized the claimant as a group 5 claimant, a union member who gets work through a local union hall. The claimant is a dues paying member of Local 67 of the International Alliance of Theatrical Stage Employees (IATSE). The claimant resides in Des Moines. Local 67 is headquartered in Des Moines. The claimant gets work exclusively through the union hall. Theatrical organizations that need stagehands provide the union local with a list of the trade positions needed to be filled for their production. The union local then contacts union members to alert them to available work. The union local uses both a seniority system and worker rating system to determine which union members to contact for the project.

The stagehand work is physically taxing. The stagehand work involved a lot of pushing and pulling to get equipment, including lights and props, into place. The work involves a lot of lifting, and includes lifting up to 100 pounds. The work involves lifting objects overhead and holding them in place for several minutes. The work routinely involves lifting 10 pounds or more and pushing greater than 20 pounds.

Since January 2024, the claimant has been dealing with right shoulder pain that impacts his ability to perform stagehand work. Prior to the onset of the shoulder injury, the claimant maintained a wide open availability with the union hall, meaning that he was available to work any day, any hour as needed. The claimant is right-handed. The pain became unbearable in February 2024. The claimant has remained in contact with the union local and has kept the union apprised of his medical restrictions. The union local has not contacted the claimant to offer work assignments.

The claimant has provided a physical therapy order dated February 19, 2024. The document reflects diagnoses of right shoulder instability, "incomplete rotator cuff tear or rupture of right shoulder, not specified as traumatic," and "superior glenoid labrum lesion of right shoulder." The document indicates that the claimant was to participate in physical therapy one to three times per week for six to eight weeks.

The claimant has provided a medical release/restrictions document dated March 29, 2024. The document reflects a diagnosis of right shoulder rotator cuff tendinosis with partial tear, bicipital tendinosis. The document indicates a release to return to work on March 29, 2024 with multiple restrictions including no lifting greater than 10 pounds, limited use of the right arm, overhead reaching with right arm only as tolerated, no pushing or pulling greater than 20 pounds, use of right arm only as a "helper hand," no repetitive use of a right arm. The restrictions were to remain in place until a six-week follow up appointment set for May 10, 2024.

On March 28, 2024, the claimant told an IWD deputy that he was unable to perform stagehand work due to the lifting restrictions.

Des Moines Performing Arts is one of the employers for whom the claimant has performed work through placement by the union hall. The claimant most recently performed work for Des Moines Performing Arts on February 6, 2024. The stagehand work for the Des Moines Performing Arts involving lifting up to 75 pounds.

The claimant has not sought employment other than stagehand work through the union local.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.4(3) provides as follows:

96.4 Required findings. An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

3. a. 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 96.1A, subsection 37, paragraph "b", subparagraph (1), or temporarily unemployed as defined in section 96.1A, subsection 37, 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) and (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.

(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.

...

(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 indicates the claimant has been unable to work in his trade due to injury and unavailable for work in his trade within the meaning of the law since he established the claim for benefits that was effective March 3, 2024. Benefits are denied effective March 3, 2024. The disqualification is ongoing. If and when the claimant's medical restrictions change, the claimant should provide the updated medical release document to IWD so that his ability to work and availability for work can be reviewed at that time.

DECISION:

The April 2, 2024 (reference 03) decision is affirmed. The claimant has been unable to work in his trade due to injury and unavailable for work in his trade within the meaning of the law since he established the claim for benefits that was effective March 3, 2024. Benefits are denied effective March 3, 2024. The disqualification is ongoing. If and when the claimant's medical restrictions change, the claimant should provide the updated medical release document to IWD so that his ability to work and availability for work can be reviewed at that time.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

May 9, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.