

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TREVOR W MCCLYMOND
Claimant

APPEAL NO. 08A-UI-02580-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

RICH JONES CONSTRUCTION
Employer

**OC: 09/16/07 R: 02
Claimant: Respondent (1)**

Section 96.5-1-d – Medical Separation
Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 7, 2008, reference 04, that concluded the claimant had offered to return to work after recovering from an injury but no work was available. A telephone hearing was held on April 1, 2008. The parties were properly notified about the hearing. The claimant participated in the hearing. Jason Jones participated in the hearing on behalf of the employer.

ISSUE:

Did the claimant offer to return to work after recovering from an injury but no work was available?

Was the claimant able to and available for work?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits with an effective date of September 16, 2007. The claimant began working for the employer as a carpenter in October 2007. He worked for the employer until November 27, 2007, when he sustained an injury at work.

Sometime in December 2007, the claimant was released to work with weight restrictions that the employer was not able to accommodate. The claimant received a full release to return to work from his doctor at the beginning of February 2008. The claimant called the owner of the company, Jason Jones, several times starting on February 2, 2008, and left messages for Jones indicating that he was able to return to work. The claimant never was able to reach Jones, and Jones never returned any of the claimant's messages. The claimant reasonably believed that Jones was not interested in rehiring him.

The claimant reopened his claim for unemployment insurance benefits effective January 27, 2008. The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim.

REASONING AND CONCLUSIONS OF LAW:

The unemployment insurance law provides that an individual is qualified to receive benefits if he: (1) left employment because of illness, injury or pregnancy with the advice of a licensed and practicing physician, (2) notified the employer that he needed to be absent because of the illness or injury, and (3) offered to return to work for the employer when recovery was certified by a licensed and practicing physician, but his regular work or comparable suitable work was not available. Iowa Code § 96.5-1-d. The claimant has satisfied all the requirements of this statute and is qualified to receive unemployment insurance benefits. The claimant testified credibly that he had made multiple attempts to contact Jones to offer to return to work, but Jones was unavailable and did not return his calls.

The next 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 § 96.4-3. The evidence establishes that as of the date the claimant reopened his claim, he had received a full release from his doctor to return to work. The claimant was able to and available for work.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, its account may be chargeable for benefits paid to the claimant based on this separation from employment.

DECISION:

The unemployment insurance decision dated March 7, 2008, reference 04, is affirmed. 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/css