

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRIAN K SCHNEIDER
Claimant

APPEAL NO. 11A-UI-15738-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ELLER CONSTRUCTION CO INC
Employer

**OC: 01/09/11
Claimant: Appellant (4-R)**

871 IAC 24.23(10) – Able and Available/Leave of Absence

STATEMENT OF THE CASE:

The claimant filed a timely appeal from a representative's decision dated December 1, 2011, reference 03, that denied unemployment insurance benefits as of October 30, 2011, upon a finding that the claimant requested and was granted a leave of absence and therefore was voluntarily unemployed and not available for work. After due notice was issued, a telephone hearing was held on January 10, 2012. The claimant participated. Participating as witnesses for the claimant were Sheila Jackson, claimant's roommate/fiancée, and Ms. Jenene McLaughlin, claimant's mother. The employer participated by Mr. John T. Flynn, attorney at law, and witness Ms. Sheri Eller, office administrator.

ISSUE:

At issue is whether the claimant is able and available for work within the meaning of the employment security law.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Brian Schneider began employment with Eller Construction, Inc. on March 28, 2011, and was employed as a full-time laborer. The claimant was paid by the hour.

Mr. Schneider sustained an injury to his shoulder on or about September 6, 2011, and subsequently re-injured his shoulder on October 25, 2011. The claimant was restricted from heavy work by a light-duty limitation imposed by his physician. The employer honored the doctor's limitation and Mr. Schneider worked when work was available to him until November 21, 2011.

Based upon medical documentation submitted to the company by Mr. Schneider or on his behalf by his medical doctor, the claimant was determined to be not able to work between November 21, and November 28, 2011. Subsequently, the claimant was separated from employment. The claimant's separation is not a subject of this hearing or decision, as the claimant was unwilling to waive notice on the issue of separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able and available for work from October 30, 2011, until November 21, 2011, and able and available for work after November 28, 2011.

Iowa Code section 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".

871 IAC 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 evidence in the record establishes that although the claimant had previously been injured, he nonetheless had been limited to only light-duty work and the employer continued to make work available to Mr. Schneider and Mr. Schneider continued to work for the company until November 21, 2011. By medical documentation supplied to the company, the claimant was determined to be not able to work for the period between November 21, 2011, and November 28, 2011. Subsequently, after November 28, 2011, the record established that the claimant was able and available for work but was subsequently separated by the employer. The issue of the claimant's separation was not adjudicated during the hearing on this matter or in this decision, as the claimant was unwilling to waive notice on the separation from employment issue. Because the claimant was not medically able to work for the period of November 21, 2011, through November 28, 2011, he is not eligible to receive unemployment insurance benefits for that period. Mr. Schneider is eligible to receive unemployment insurance benefits for the period of October 30, 2011, until November 21, 2011, and after November 28, 2011, provided he meets all other eligibility requirements of Iowa law.

The issue of whether the claimant was separated from employment under disqualifying conditions is remanded to the Unemployment Insurance Services Division for an investigation and the issuance of an appealable determination on the claimant's separation from employment with Eller Construction Company, Inc.

DECISION:

The representative's decision dated December 1, 2011, reference 03, is affirmed as modified. Mr. Schneider was not able to work for the period of November 21, through November 28, 2011, and is not eligible to receive unemployment insurance benefits for that period. The claimant was able and available for work from October 30, 2011, through November 21, 2011, and was able and available for work after November 28, 2011, and is eligible to receive unemployment insurance benefits, provided he has met all other eligibility requirements of Iowa law.

The issue of whether the claimant was separated from employment under disqualifying conditions is remanded to the Unemployment Insurance Services Division for an investigation and the issuance of an appealable determination on the claimant's separation from employment with Eller Construction Company, Inc.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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