

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

A B JACKSON
Claimant

APPEAL NO. 08A-UI-06716-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DELONG SPORTSWEAR INC
Employer

OC: 04/13/08 R: 02
Claimant: Appellant (1)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

A. B. Jackson (claimant) appealed a representative's July 16, 2008 decision (reference 02) that concluded he was not eligible to receive benefits as of June 19, 2008, because he of his inability to work after a June 19 surgery. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 6, 2008. The claimant participated in the hearing. Abby Thompson, the payroll office assistant, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

As of June 19, 2008, is the claimant able to and available for work?

FINDINGS OF FACT:

The claimant started working for the employer on November 27, 2006. He is a full-time employee.

The claimant injured his shoulder while off duty. On June 14, 2008, the claimant saw his physician who restricted him from doing any work until June 18, 2008. The claimant's physician recommended surgery which was scheduled on June 19, 2008. The claimant requested and the employer granted him a medical leave of absence for his shoulder surgery from June 19 to August 4, 2008.

After the claimant recovered from the June 19 surgery, his physician released the claimant to return to work on August 4. The claimant returned to work on that day.

The claimant filed claims for the weeks ending June 21 through July 12, 2008.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for benefits, he must be able to and available for work. Iowa Code § 96.4-3. The law provides that a leave of absence negotiated with the consent of both parties is deemed a period of voluntary unemployment for the claimant and the claimant is considered ineligible for benefits for the period covered by the leave of absence. 871 IAC 24.22(2)(j). The law presumes a claimant is not available to work when he is under a doctor's care and has not been released as being able to work. 871 IAC 24.23(35).

The facts establish the claimant requested and was granted a medical leave of absence June 19 through August 4 because of surgery he had on his shoulder. The claimant's physician did not release him to return to work until August 4 or at the end of his leave of absence. The claimant was not able to work from June 15 through August 2, 2008.

DECISION:

The representative's July 16, 2008 decision (reference 02) is affirmed. The claimant was under a doctor's care and was restricted from working June 15 through August 2, 2008. Also, the claimant requested and was granted a medical leave of absence June 19 through August 4, 2008. Since his physician restricted him from working and he was on a medical leave of absence June 19 through August 4, 2008, the claimant is not eligible to receive benefits as of June 15, 2008, because he was not able to work.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css