

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DUANE D HUTCHINSON**  
Claimant

**HAUGE CORP**  
Employer

**APPEAL 18A-UI-09313-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/03/18**  
**Claimant: Appellant (1R)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the September 4, 2018, (reference 02) unemployment insurance decision that denied benefits based upon claimant's ability to work. The parties were properly notified about the hearing. A telephone hearing was held on September 25, 2018. Claimant participated personally and through witness Paula Hutchinson. He was represented by Don Gifford. Employer participated through co-owners Don Hauge and Flo Hauge. Claimant's Exhibit A was received.

**ISSUE:**

Is the claimant able to work and available for work effective June 3, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant began working for employer in January 2015. Claimant last worked as a part-time detailer.

On April 17, 2018, claimant slipped and fell and injured his shoulder outside of employer's facility during work hours. Claimant filed a claim for workers' compensation benefits with employer's insurance carrier. The insurance carrier denied the claim finding that claimant was acting outside the scope of his work duties when he was injured. Claimant has not filed an appeal of that decision. On April 18, 2018, claimant called owner Don Hauge and informed him he would need to be off of work for the next three months due to his injury.

On June 1, 2018, claimant went to the doctor. The doctor released claimant to return to work with restrictions of no lifting more than ten pounds above his shoulder and 20 pounds below his shoulder. A surgery was scheduled on claimant's left shoulder for November 2018.

On June 1, 2018, claimant went into his place of employment and requested to return to work. Employer declined at that time and claimant considered himself terminated. Claimant filed a claim for unemployment insurance benefits.

Claimant works for another employer on a seasonal, supplemental basis. Claimant is not looking for employment to replace his wages with employer. He is waiting until he has surgery on his shoulder in November 2018, to seek additional employment.

No initial determination has been made by the Benefits Bureau of Iowa Workforce Development on whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant is not available for work.

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".

Iowa Code section 96.19(38) provides:

"Total and partial unemployment".

a. An individual shall be deemed "totally unemployed" in any week with respect to which no wages are payable to the individual and during which the individual performs no services.

b. An individual shall be deemed partially unemployed in any week in which either of the following apply:

(1) While employed at the individual's then regular job, the individual works less than the regular full-time week and in which the individual earns less than the individual's weekly benefit amount plus fifteen dollars.

(2) The individual, having been separated from the individual's regular job, earns at odd jobs less than the individual's weekly benefit amount plus fifteen dollars.

c. An individual shall be deemed temporarily unemployed if for a period, verified by the department, not to exceed four consecutive weeks, the individual is unemployed due to a plant shutdown, vacation, inventory, lack of work or emergency from the individual's regular job or trade in which the individual worked full-time and will again work full-time, if the individual's employment, although temporarily suspended, has not been terminated.

Claimant did not consider himself temporarily unemployed effective June 1, 2018, as he considered himself terminated at that time. He did not expect to return back to his previous schedule with employer. Therefore, he is not considered "temporarily unemployed" and is required to be available for work and earnestly and actively seeking work in order to be eligible for unemployment insurance benefits. Claimant can work with an accommodation, but he testified that he is not seeking employment to replace his wages with employer until after his surgery in November 2018. Although claimant does some work for another employer, that work is seasonal and supplemental. The majority of claimant's wage credits are derived from his employment with employer and he would not be monetarily eligible for benefits without them. Claimant is not eligible for unemployment insurance benefits as he is unduly limiting his availability for work.

**DECISION:**

The September 4, 2018, (reference 02) unemployment insurance decision is affirmed. The claimant is not available for work effective June 3, 2018. Benefits must be denied and are withheld until such time as claimant makes himself available for work and earnestly and actively seeks work.

**REMAND:**

The issue of whether claimant's separation from employment with employer disqualifies him from receiving unemployment insurance benefits is remanded to the Benefits Bureau of the Iowa Workforce Development for an initial investigation and determination.

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Christine A. Louis  
Administrative Law Judge  
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Decision Dated and Mailed

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