

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT HALE
Claimant

APPEAL NO: 09A-UI-14888-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 08/30/09
Claimant: Appellant (2)

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Scott Hale (claimant) appealed an unemployment insurance decision dated September 24, 2009, reference 02, which held that he was not eligible for unemployment insurance benefits because he was not able to work due to an injury. After a hearing notice was mailed to the party's last-known address of record, a telephone hearing was held on November 3, 2009. The claimant participated in the hearing. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was not available for work due to a work-related injury sustained on June 4, 2009. His physician released him to return to work without restrictions on June 24, 2009.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

Iowa Code § 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 claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). His physician released him to return to work on June 24, 2009 without restrictions. The claimant meets the availability requirements of the law as of the week ending July 4, 2009.

DECISION:

The unemployment insurance decision dated September 24, 2009, reference 02, is reversed. The claimant is able to work and qualifies for benefits, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css