

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROBERT L CRIPPS
Claimant

APPEAL NO: 10A-UI-11083-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**THE IOWA PRIMATE LEARNING
SANCTUARY**
Employer

OC: 06/14/09
Claimant: Appellant (1/R)

Section 96.4-3 – Able to and Available for Work

STATEMENT OF THE CASE:

The claimant appealed a representative's July 27, 2010 decision (reference 08) that held he was ineligible to receive benefits from May 2 to 22, 2010, because of an injury. A telephone hearing was held on September 23, 2010. The claimant participated in the hearing. Mike German, the director of public safety, and Susan McKee, the director of operations, 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:

Is the claimant able to and available for work May 2 through 22, 2010?

FINDINGS OF FACT:

The claimant had shoulder surgery on May 4, 2010. His doctor released him to return to work on May 18 with work restrictions. The claimant's work restriction included no lifting more than 15 pounds. When the claimant offered to return to light-duty work as of May 18, the employer did not have any light-duty work the claimant could do.

The claimant talked to his physician and was released to return to work without any restrictions as of May 25, 2010. After the claimant gave the employer the updated work release, the claimant was put back on the schedule by May 30, 2010.

The claimant filed claims for the weeks ending May 8, 15, 22 and 29, 2010.

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 presumes a claimant is not able to or available for work when he is in the hospital and if he has a doctor's statement indicating he is not able to work. 871 IAC 24.23(2), (6) and (35). Since the claimant had surgery on May 4, he was not able to or

available to work the majority of the week ending May 8, 2010. His physician did not release him to work, light-duty work, until May 18. Therefore, he was not able to or available for work the week ending May 15.

The week ending May 22, the claimant was only able to do light-duty work. The law presumes a claimant is not able to or available for work when he has unduly limited the type of work he will perform. 871 IAC 24.23(18). After the claimant was released to work without any work restriction as of May 25, he was able to and available for work. The claimant was not able to and available for work the week ending May 22, but he was able to and available for work the week ending May 29, 2010.

The claimant is not eligible to receive benefits for the weeks ending May 8, 15 and 22. As of May 23, 2010, the claimant is eligible to receive benefits. Since the claimant received benefits when he was not legally entitled to receive them, an issue of overpayment will be Remanded to the Claims Section determine.

DECISION:

The representative's July 27, 2010 decision (reference 08) is affirmed. The claimant is not eligible to receive benefits for the weeks ending May 8, 15 and 22, 2010, because he had surgery on May 4 and was not released to return to work without any work restrictions until May 25. As of May 23, the claimant is eligible to receive benefits. An issue of overpayment for the weeks ending May 8, 15 and 22 is **Remanded** to the Claims Section to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css