

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN D HUFFMAN
Claimant

APPEAL NO. 17A-UI-04643-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WALLER TRUCK CO
Employer

OC: 04/09/17
Claimant: Appellant (1R)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

Shawn Huffman filed a timely appeal from the April 28, 2017, reference 01, decision that denied benefits effective April 9, 2017, based on the claims deputy's conclusion that Mr. Huffman was unable to work due to surgery and therefore did not meet the availability requirement. After due notice was issued, a hearing was held on May 19, 2017. Mr. Huffman participated personal and was represented by attorney Samuel Aden. At the time of the hearing, the employer representative, Tim Crowley, was not available at the telephone number the employer registered for the hearing and did not participate. The administrative law judge took official notice of the following Agency's administrative records: DEBRO and KCCO. The administrative law judge took official notice of the documents submitted for and created in connection with the fact-finding interview.

ISSUES:

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Shawn Huffman has worked as a commercial truck driver for over two decades. Mr. Huffman was most recently employed by Waller Truck Company as a full-time over-the-road commercial truck driver. Mr. Huffman began the employment on October 31, 2016 and last performed work for the employer on April 5, 2017. At that time, Mr. Huffman went off work so that he could undergo surgery on his right shoulder. Mr. Huffman asserts that the employer told him the employer would have to terminate his employment in light of his need to go off work.

On April 7, 2017, Mr. Huffman underwent surgery on his right shoulder. Mr. Huffman had a rotator cuff injury and a torn tendon in his right bicep. The injuries predated the Waller Truck Company employment. Following the surgery, Mr. Huffman's surgeon told him that he would be unable to use his shoulder for about six months. The doctor restricted Mr. Huffman from performing any pushing or pulling outside of physical therapy. The restrictions made it impossible for Mr. Huffman to perform commercial truck driving or to pass the required D.O.T.

physical. Mr. Huffman began physical therapy two or three weeks following his surgery and continues to receive physical therapy two times per week. Mr. Huffman's doctor has not indicated when the physical therapy sessions might be discontinued. Mr. Huffman is planning to return to the employment at Waller Truck Company once he is released to return to the employment and can pass the required D.O.T. physical.

Mr. Huffman established an original claim for benefits that was effective April 9, 2017. Mr. Huffman has made weekly claims, but has not yet received any unemployment insurance benefits. Mr. Huffman has made job contacts since he filed his claim. During the week that ended April 15, Mr. Huffman applied for a job at NAPA in Adel, at a grocery store in Guthrie Center, and at Dodge Dealership in Adel. During the week that ended April 22, Mr. Huffman applied for a job at Family Dollar and Casey's. Mr. Huffman indicates the prospective work would involve stocking shelves and/or running the cash register. During the week that ended April 29, Mr. Huffman applied for a job at Walmart in Grimes and at a Sinclair gas station. The prospective employment at Walmart would involve stocking shelves, operating a cash register, and/or greeting customers. The work at Sinclair would involve operating the cash register or cooking. Mr. Huffman cannot recall any job contacts from the week that ended May 6. During the week that ended May 13, Mr. Huffman applied for work at a Subway restaurant and at a Family Dollar store. During the week that ended May 20, Mr. Huffman applied for a job at Hy-Vee and at Pizza Ranch. The prospective employment at Hy-Vee would involve stocking shelves or bagging groceries. The prospective employment with Pizza Ranch would involve service food and/or washing dishes.

REASONING AND CONCLUSIONS OF LAW:

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".

Iowa Admin. Code r. 871-24.22(1)a provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(1) Able to work. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A

statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Iowa Admin. Code r. 871-24.23(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.

Iowa Admin. Code r. 871-24.23(35) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The weight of the evidence in the record establishes that Mr. Huffman has not met the requirements set forth in Iowa Code section 96.4(3) since he established the claim for benefits that was effective April 9, 2017. Immediately before Mr. Huffman established the claim he separated from full-time employment due to his need to undergo surgery on his shoulder and arm. Mr. Huffman has since been without the use of his right shoulder and has been restricted from pushing or pulling with his right, dominant arm and hand. Mr. Huffman has not submitted any medical documentation for consideration. Such evidence is conspicuously absent from the evidentiary record. With the restriction against pushing or pulling, it is doubtful that Mr. Huffman would be able to perform any work for which he is otherwise qualified. Though Mr. Huffman asserts he could perform office work, he has no background in performing office work and has not sought clerical jobs. A reasonable person would conclude that most of the jobs Mr. Huffman has applied for, and perhaps all of the jobs he has applied for, would involve some degree of pushing and pulling. In other words, Mr. Huffman appears to have applied for jobs he is at present physically incapable of performing. Mr. Huffman has not presented sufficient evidence

to establish that he able to perform full-time work in light of his injury and cannot be deemed available for work within the meaning of the law. Benefits are denied effective April 9, 2017. The able and available disqualification continued as of the May 19, 2017 appeal hearing.

DECISION:

The April 28, 2017, reference 01, decision is affirmed. The claimant has not been able and available for work since establishing his claim for benefits. Benefits are denied effective April 9, 2017. The able and available disqualification continued as of the May 19, 2017 appeal hearing.

This matter is remanded for adjudication of the separation from Waller Truck Company.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/rvs