

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**KENNETH L HARRYMAN**  
Claimant

**APPEAL NO. 18R-UI-10358-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**J.G. SERVICES LLC**  
Employer

**OC: 08/05/18**  
**Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

**STATEMENT OF THE CASE:**

Kenneth Harryman (claimant) appealed a representative's August 27, 2018, decision (reference 01) that concluded he was not eligible to receive unemployment insurance benefits because he did not meet the availability requirements to work with J.G. Services (employer) as of August 5, 2018. Administrative Law Judge Elder issued a decision on September 26, 2018, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on October 15, 2018. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for October 31, 2018. The claimant participated personally. The employer participated by Jeff Gould, Owner, and Jake Gould, Manager.

**ISSUE:**

The issue is whether the claimant is able and available for 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 worked for the employer from June 1, 2016, to August 2, 2018. In May 2018, the claimant noticed pain in his right shoulder. The claimant and employer agreed that August 2018, would be a good time for the claimant to have rotator cuff surgery.

The claimant filed for unemployment insurance benefits with an effective date of August 5, 2018. He had surgery on August 8, 2018. The claimant has not been released to return to work. On or about October 17, 2018, the manager told the claimant that work would be available when he provided a full release from his physician.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the claimant is not able and available for work as of August 5, 2018.

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.

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). When an employee is unable to perform work due to a medical issue, he is considered to be unavailable for work. The claimant had surgery and has not received a medical release from his physician. He is considered to be unavailable for work after his surgery. The claimant is disqualified from receiving unemployment insurance benefits beginning August 5, 2018, due to his unavailability for work.

**DECISION:**

The representative's August 27, 2018 decision (reference 01) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because he is not able and available for work with the employer.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs