

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CODY L HARTLEY**  
Claimant

**APPEAL NO. 13A-UI-11593-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CDI LLC**  
Employer

**OC: 07/01/12**  
**Claimant: Appellant (4)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the October 3, 2013, (reference 04) unemployment insurance decision that denied benefits effective June 23, 2013, based upon claimant's ability to and/or availability for work. The parties were properly notified about the hearing. A telephone hearing was held on November 7, 2013. Claimant participated. Employer did not respond to the hearing notice instruction and did not participate.

**ISSUE:**

Is the claimant able to and available for work?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was under the care of his physician for a hand injury and related surgery and recovery until February 6, 2013, when he was released with no left hand use. Claimant is right handed. His June 6, 2013, separation is addressed in an earlier decision by an administrative law judge (ALJ). He was released without restriction on August 28, 2013. He claimed benefits for the three weeks ending July 6, 2013, and resumed claiming benefits effective August 25, 2013. He began working in a farming seasonal position the week of October 6, 2013, and stopped claiming benefits.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work from June 23, 2013, to July 6, 2013, but is able to work effective August 25, 2013.

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 24.22(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.

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.

Claimant was not available for work from June 23, 2013, to July 6, 2013, because of being unable to use his left hand. Given his history of factory or industrial work, he was unlikely to find work that would accommodate that restriction. As of Wednesday, August 28, 2013, claimant is considered able to and available for work since he was released to work without medical restrictions and was available the major portion of that work week.

**DECISION:**

The October 3, 2013, (reference 04) decision is modified in favor of the appellant. The claimant is not able to work and available for work from June 23, 2013, to August 24, 2013. He is able to work and available for work effective August 25, 2013, and benefits are allowed as of that date, provided he is otherwise eligible.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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