

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN VANSKOY
Claimant

APPEAL NO: 14A-UI-04561-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTRO INC
Employer

OC: 03/30/14
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the April 28, 2014, reference 04, decision that denied benefits. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 21, 2014. The claimant participated in the hearing. Tracy Lennon, Human Resources Generalist and Terry Waychoff, Business Process Leader, participated in the hearing on behalf of the employer.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant suffered a severe back injury while doing yard work and was unable to perform the essential functions of his job after being placed on restrictions following an MRI April 4, 2014, and then being told he had a herniated disc and would require surgery, which took place April 18, 2014. The employer was extremely busy and could not hold the claimant's job while he recovered and waited to receive a full release to return to work and consequently his employment was terminated April 8, 2014.

The claimant was released with restrictions April 21, 2014, and anticipates receiving a full release to return to work June 2, 2014. He cannot lift more than 10 pounds, can stand as tolerated, and needs to take a break from sitting after 30 minutes. He has been seeking bank and office jobs that would be less physically demanding than his position as an assistant machine operator. He previously worked for Wells Fargo from December 2010 through July 2013 and has experience in bank and office work.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work.

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".

While the claimant cannot perform the essential functions of his previous position, even with his restrictions he is able to do other types of work, including bank and office jobs. Because he is not required to be able to do his previous job but simply must be able to perform any job, he is considered able and available for work. (Emphasis added). Accordingly, benefits are allowed.

DECISION:

The April 28, 2014, reference 04, decision is reversed. The claimant is able to work and available for work effective March 30, 2014. Benefits are allowed.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/pjs