

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MIKE CARLEY**  
Claimant

**APPEAL NO. 14A-UI-06639-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FARNER-BOCKEN CO**  
Employer

**OC: 05/11/14**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Mike Carley filed a timely appeal from the June 2, 2014, reference 02, decision that denied benefits effective May 11, 2014 based on an Agency conclusion that he did not meet the work availability requirement. After due notice was issued, a hearing was held on July 16, 2014. Mr. Carley participated. Amy Ross, Human Resources Manager, represented the employer. Exhibits One and Two were received into evidence. The administrative law judge took official notice of the June 2, 2014, reference 01, decision and of the Agency's administrative record (DBRO and KCCO) of Mr. Carley's weekly claim for benefits since May 11, 2014.

**ISSUES:**

Whether Mr. Carley has met the work availability and work ability requirements since he established the claim for benefits that was effective May 11, 2014.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Mike Carley established a claim for unemployment insurance benefits that was effective May 11, 2014. Mr. Carley had suffered a heart attack and stroke in October 2013. At the time Mr. Carley established his claim for benefits, his doctor had not released him to return to work. Mr. Carley next met with the doctor on June 9, 2014. Mr. Carley reports that the doctor at that time released him to perform some work, though Mr. Carley cannot say what type of work he was released to perform. Mr. Carley did not obtain a written medical release from his doctor and has not provided any medical documentation to Iowa Workforce Development concerning his ability to perform work in light of his health issues. Mr. Carley's most recent employer, Farner-Bocken, provided a report from a physical therapist for the hearing. The report is dated May 13, 2014. The report references Mr. Carley's inability to perform his previous duties at Farner-Bocken. The report presents a mixed picture of Mr. Carley's physical abilities and references day-to-day inconsistency in muscle tone and flexibility.

Since the June 9, 2014 appointment with his doctor, and through the benefit week that ended July 12, 2014, Mr. Carley has made at least two job contacts per week. Some of those job contacts have been multiple contacts with the same employer. Some of those job contacts are for positions that a person with Mr. Carley's physical limitations might not be able to perform.

**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.

Mr. Carley has presented insufficient evidence to establish that he has met the work ability and availability requirements since he established his claim for benefits. Mr. Carley concedes that prior to June 9, 2014 he was not released to perform any work. Mr. Carley cannot say what work, if any, his doctor released him to perform at the time of the June 9, 2014 medical appointment. Mr. Carley has provided the Agency with no medical documentation to establish his ability to perform any work in light of his serious health issues. Though Mr. Carley had made a work search; his health issues, and the absences of medical documentation releasing him to perform work, call into question whether Mr. Carley can perform the work he has applied for. For all these reasons, the administrative law judge concludes that Mr. Carley has not met the work ability requirements and availability requirements since he established his claim. Benefits are denied effective May 11, 2014. Mr. Carley will continue to be ineligible for benefits until he provides appropriate documentation indicating he has been released to return to work and what work he is released to perform. Mr. Carley must meet all other eligibility requirements.

**DECISION:**

The Claims Deputy's June 2, 2014, reference 02, is affirmed. The claimant has not met the work availability and ability requirements since he established his claim. Benefits are denied effective May 11, 2014. The claimant will continue to be ineligible for benefits until he provides appropriate documentation indicating he has been released to return to work and what work he is released to perform. Mr. Carley must meet all other eligibility requirements.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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