

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP L SIMMONS
Claimant

APPEAL NO: 18A-UI-06600-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEE ZEE INC
Employer

OC: 05/13/18
Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

The claimant filed an appeal from the June 7, 2018, (reference 02) unemployment insurance decision that denied benefits. The claimant was properly notified about the hearing. A telephone hearing was held on July 3, 2018. The claimant participated personally. The employer registered a phone number for Sarah Tew, who was unavailable when called. A voicemail was provided directing Ms. Tew to call the Appeals Bureau immediately to participate in the hearing. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant able to work and available for work effective May 13, 2018?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was last employed at Dee Zee Inc. until separation on March 27, 2018. He has been making weekly continued claims since establishing a claim for benefits with an effective date of May 13, 2018.

Prior to separation with the employer, the claimant was involved in a work-related accident, which caused four broken vertebrae and three broken ribs. The emergency room physician who treated him issued restrictions which included “taking it easy” and no lifting over five pounds. The claimant received no other treatment related to his back and ribs. On June 21, 2018, the claimant’s personal physician issued a release, stating he could return to work without restrictions. The claimant has been looking for full-time employment, primarily fork-lift driving positions. He does not possess a license and relies upon friends or family for transportation.

On June 28, 2018, the claimant went to Missouri for personal reasons. He intends to remain in Missouri for a couple of weeks.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the claimant was able and available for work for the one-week period ending June 30, 2018 only.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code Section 96.4-3. The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work. The unemployment insurance rules require that an individual be physically and mentally able to work in some full time gainful employment, not necessarily in the individual's customary occupation, but a job which is engaged in by others as a means of livelihood. 871 IAC 24.22(1).

In this case, the claimant's ability was severely limited from the time he established his claim for unemployment insurance benefits, with an effective date of May 13, 2018, until he was released by his doctor to work without restrictions on June 21, 2018. During this period, the claimant's restrictions included "taking it easy" and not lifting over five pounds. The claimant failed to establish he was able to perform work while under these restrictions. Accordingly, the claimant does not meet the eligibility requirements between May 13, 2018 until his release without restrictions, on June 21, 2018. Benefits are denied during this period.

For the week of June 24 through 30, 2018, the claimant was in town the majority of the work week, and without any medical restrictions that would have prevented him from accepting employment. Accordingly, the administrative law judge concludes the claimant does meet the eligibility requirements of being able to and available for work for the week ending June 30, 2018 only.

For the week beginning July 1, 2018, the claimant has been in Missouri for personal reasons. (He actually arrived on June 28, 2018). The claimant intends to stay a "couple of weeks". When asked about his job search record, the claimant stated he left it in Iowa. Accordingly, the administrative law judge is not persuaded the claimant is able to, available for work, and earnestly making work searches while in Missouri.

Iowa Admin. Code r. 871-24.23(25) provides:

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

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

Accordingly, the administrative law judge concludes the claimant is not able and available for work beginning July 1, 2018, because the claimant is out of town for personal reasons.

DECISION:

The June 7, 2018, (reference 02) decision is modified in favor of the claimant/appellant. The claimant is able and available for work for the week ending June 30, 2018 only. Benefits are allowed for this week only, provided he is otherwise eligible.

The claimant is ineligible for benefits for the period of May 13, 2018 until June 23, 2018, (due to injury) and beginning July 1, 2018 (due to personal travel).

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn