

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CHARLES A JONES**

Claimant

**APPEAL NO. 13A-UI-09506-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUILDER SERVICES GROUP INC**

Employer

**OC: 07/14/13**

**Claimant: Appellant (1)**

Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Charles Jones filed a timely appeal from the August 14, 2013, reference 01, decision that denied benefits effective July 14, 2013 based on an agency conclusion that he was unable to perform work due to illness. After due notice was issued, a hearing was held on September 23, 2013. Mr. Jones participated. The employer waived its participating in the hearing. The hearing in this matter was consolidated with the hearing in Appeal Number 13A-UI-09507-JTT. Exhibit A and Department Exhibits D-1 through D-3 were received into evidence.

**ISSUE:**

Whether Mr. Jones has been able to work and available for work since he established the claim for unemployment insurance benefits that was effective July 14, 2013.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Charles Jones was employed by Builder Services Group, Inc., also known as Masco Contractor Services, as a full-time insulation sales representative. He started the employment in 2011. He last performed work for the employer on or about July 9, 2013. Mr. Jones' usual work hours were 7:00 a.m. to 5:00 p.m. Mr. Jones' insulation sales duties included traveling to construction sites and measuring buildings in the course of preparing a quote or bid.

In May 2013, Mr. Jones played recreational football on the weekend and afterwards felt pain in his right hip. Mr. Jones went to the emergency room and underwent x-rays, which revealed a cancerous mass on his right hip bone. Mr. Jones sought additional evaluation and treatment at the University of Iowa Hospitals and Clinics. An orthopedic oncologist gave him the option of full or partial hip replacement or having the mass scraped for his pelvic bone. Mr. Jones elected the latter treatment because it offered the greatest likelihood that he would continue to be able to walk. Mr. Jones underwent the procedure during the first week on July 12, 2013.

In July 2013, Mr. Jones entered into a discussion with a benefits representative at Masco about whether he was eligible for short-term disability benefits. It was Mr. Jones intention to request a leave of absence when he underwent surgery and to have the leave continue through a

recovery period. Mr. Jones learned he was not eligible for such benefits. Mr. Jones then entered into a discussion with Masco about whether they could come to an agreement whereby the employer would support Mr. Jones' application for unemployment insurance benefits so that Mr. Jones could use those in lieu of short-term disability. The employer's representative agreed to enter into an arrangement whereby Mr. Jones would resign from the employment and the employer would not contest an unemployment insurance claim.

On July 12, 2013, Mr. Jones completed an FMLA Leave Periodic Status Report in which he requested a leave of absence effective that date due to "cancer surgery in the pelvis/hip bone area." Mr. Jones indicated on the document that he did *not* intend to return to the employment.

Mr. Jones established a claim for unemployment insurance benefits that was effective July 14, 2013. Mr. Jones received \$1,200.00 in benefits for the three-week period of July 14, 2013 through August 3, 2013.

On July 26, 2013, Mr. Jones' health care provider completed a Certification of Health Care Provider for Employee's Serious Health Condition (FMLA). The document identified Benjamin Miller, M.D., an orthopedic oncologist at the University of Iowa Hospitals and Clinics, as the health care provider. The document provided May 16, 2013 as the onset of Mr. Jones' medical condition. The document indicated the duration of his medical condition was unknown, but that it would require follow up evaluation and/or treatment for a minimum of ten years. The document indicated that Mr. Jones was hospitalized from July 12, 2013 through July 14, 2013 and that he had received treatment on May 16 and 20, and July 11-14, 2013. In response to a question on the form that asked, "Is the employee unable to perform any of his/her job functions due to the condition," the provided answered *no*. The document provided a diagnosis of chondrosarcoma on the right acetabulum (concave surface of the pelvis) and a secondary diagnosis of right hip and leg pain. The document indicated a treatment plan of curettage (removal of tissue by scraping), bone grafting of a pelvic lesion on July 12, 2013, and required routing follow up every three months for several years. The document indicated that Mr. Jones would "be incapacitated for a single continuous period of time due to his/her medical condition" during the period of July 12, 2013 through August 23, 2013 in connection with surgery and recovery from the surgery. The document further indicated that Mr. Jones was to have a follow up appointment two weeks after the surgery, six weeks after the surgery, every three to four months for five years. The document indicated that it would be necessary for Mr. Jones to miss work during flare ups and to rest his leg for pain control. The document indicated that Mr. Jones could expect flare ups one to two times per month for 12 to 24 months. The document was signed by an Advanced Registered Nurse Practitioner on behalf of Dr. Miller.

Mr. Jones job search since he established claim for benefits has been spotty. During the week that ended July 20, 2013, Mr. Jones applied for a couple jobs through careerbuilder.com that he later concluded were scams. Mr. Jones could not recall any job contacts for the week ending July 27, 2013. For the week ending August 3, 2013, Mr. Jones contacted an insulation company, but did not make a second job inquiry. During the week that ended August 10, 2013, Mr. Jones inquired about a window sales position, but did not make a second job inquiry. Mr. Jones could recall any job contacts for the week ending August 17, 2013. For the week ending August 24, Mr. Jones did make two job inquiries, one with a wheelchair company and another with Billion auto sales. During the week that ended August 31, 2013, Mr. Jones inquired about work at Slumberland, but did not make a second job inquiry. During the week that ended September 7, 2013, Mr. Jones registered for work with Labor Ready and inquired about a forklift driver position at Proctor & Gamble. During the week that ended September 14, 2013, Mr. Jones inquired about an office administrator position, but could not recall another job contact for that week. During the week that ended September 21, 2013, Mr. Jones registered

for work with Team Staffing Solutions and inquired about forklift driver work at an Iowa City manufacturing plant.

### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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(1)a and (2) provide:

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.

(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.

The only medical documentation available for the hearing was the July 26, 2013, Certification of Health Care Provider for Employee's Serious Health Condition (FMLA). That document indicated that Mr. Jones would need to be off work from July 12, 2013 through August 23, 2013 in connection with undergoing surgery on July 12, 2013 and recovering from that surgery. The

Certification is sufficient to establish that Mr. Jones did not meet the work ability and work availability requirements during that period. Unfortunately, Mr. Jones has provided no more recent statement from his physician that he is released to return to work, any work. In the absence of such documentation, the administrative law judge must conclude that Mr. Jones has not satisfied the work ability and availability requirements to date. The evidence indicates that for the weeks that ended July 20, 2013, August 24, 2013, September 7, 2013, and September 21, 2013, Mr. Jones made at least two job inquiries and barely met the work search requirement. During the weeks that ended July 27, 2013, August 3, 2013, August 10, 2013, August 17, 2013, August 31, 2013, and September 14, 2013, Mr. Jones made few than two job contacts and did not meet the work search requirement. During any week in which Mr. Jones did not meet the work search requirement, this would create an additional basis for disqualification for benefits.

**DECISION:**

The agency representatives August 14, 2013, reference 01, decision is affirmed. The claimant has not met the work ability and work availability requirements since he established his claim for benefits and is not eligible for benefits. Benefits are denied effective July 14, 2013. This disqualification continued as of the September 23, 2013 appeal hearing.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/css