

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TRACY R LATIMER**  
Claimant

**APPEAL NO. 12A-UI-09054-VS**

**SIMPLEXGRINNELL LP**  
Employer

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/03/12**  
**Claimant: Appellant (2)**

Section 96.4-3 – Able and Available  
871 IAC 24.22(2)J – Leave of Absence

**STATEMENT OF THE CASE:**

The claimant filed an appeal from a decision of a representative dated July 23, 2012, reference 01, which held that the claimant was ineligible for unemployment insurance benefits. After due notice, a hearing was scheduled for and held on December 19, 2012. The claimant participated personally. The claimant was represented by Earl Payson, Attorney at Law. The employer advised the Appeals Bureau in writing that it would not be participating in the hearing. The record consists of the testimony of Tracy Latimer and Claimant's Exhibit A. Mr. Payson made a professional statement on behalf of his client.

**ISSUE:**

Whether the claimant is able and available for work.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The employer provides commercial fire alarm protection services. The claimant was hired on July 2, 2004. He worked as a full-time installer. His last day of work was June 1, 2012.

The claimant had a work-related injury to his left knee on May 20, 2010. The claimant required surgery and was given a return to work without restrictions. The claimant did return to work but his knee continued to give him problems. His attorney arranged for a second opinion with a physician in Des Moines, Iowa. He gave the claimant some restrictions, including climbing no more than seven stairs and no sitting for more than half an hour. The claimant presented these restrictions to his employer. The employer would not honor these restrictions and sent the claimant home. The claimant never returned to work. He was not given short-term disability nor was he put on Family Medical Leave Act (FMLA) leave. No leave of absence was given by the employer.

The claimant is 45 years old and has an associate of science degree. He is actively looking for work. He has experience as a maintenance mechanic and is especially interested in doing this type of work. He has done factory work as well and is able to do that type of work at the present time.

**REASONING AND CONCLUSIONS OF LAW:**

871 IAC 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.

The claimant is able and available for work as of June 3, 2012. There is no evidence that he was placed on a negotiated leave of absence by the employer. Rather the employer refused to accommodate new restrictions placed on the claimant because of a work-related injury. The claimant is able to work despite these restrictions and could have continued to work for the employer. The claimant is actively looking for work in factories and as a maintenance mechanic. Benefits are therefore allowed provided the claimant meets all other eligibility criteria.

**DECISION:**

The decision of the representative dated July 23, 2012, reference 01, is reversed. Unemployment insurance benefits are allowed provided claimant is otherwise eligible. The claimant is able and available for work and is not on a negotiated leave of absence.

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Vicki L. Seeck  
Administrative Law Judge

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Decision Dated and Mailed

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