

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

CHRISTIAN A ZULAUF
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BOCKENSTEDT EXCAVATING INC
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Appeal Number: 04A-UI-02939-DWT
OC 01/04/04 R 03
Claimant: Respondent (2/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.4-3 – Ability to and Availability for Work

STATEMENT OF THE CASE:

Bockenstedt Excavating, Inc. (employer) appealed a representative's March 12, 2004 decision (reference 12) that concluded Christian A. Zulauf (claimant) was eligible to receive benefits as of March 11, 2004 because he was medically able to work as of this date. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2004. The claimant responded to the hearing notice but was not available for the hearing. No one appeared on the claimant's behalf. Barbara Campbell, the office manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 and available for work as of March 11, 2004?

FINDINGS OF FACT:

The employer hired the claimant to work with heavy equipment the summer of 2003. The claimant's last of work was December 29, 2003. The claimant experienced medical problems and could not work for a while.

The claimant and employer participated in a hearing conducted by another administrative law judge on March 1. As a result of the evidence presented during that hearing, a March 5 decision concluded the claimant was not able to or available for work. The claimant was told he should contact his local Workforce office when his medical condition stabilized and he was able to return to work.

On March 11, 2004, the claimant reopened his claim for benefits because his doctor had released him to return to work. The claimant, however, had a work restriction that he could not do jobs involving handling of heavy equipment. The only jobs the employer has involves handling of heavy equipment.

The claimant filed claims for the weeks ending March 13, 20 and 27. He received his maximum weekly benefit amount of \$211.00 during the weeks ending March 20 and 27. The Department used the claimant's \$211.00 benefit entitlement for the week ending March 13 to offset a previously established overpayment.

The claimant did not participate in the April 6 hearing and did not indicate what job(s) he is able to do and has experience doing with the work restrictions his doctor gave him as of March 11, 2004.

REASONING AND CONCLUSIONS OF LAW:

Each week a claimant files a claim for unemployment insurance benefits, he must be able to and available for work. Iowa Code §96.4-3. Since the claimant is restricted from work involving handling heavy equipment, the claimant is unable to return to work for the employer with his current work restrictions. The claimant did not participate at the hearing and did not establish what work he is able to do with his current work restrictions or has previous experiencing doing. Therefore, even though his doctor released him to work with work restrictions, the claimant did not establish what he is able to or available to do. Also, when his doctor released him to return to work as of March 11, the claimant was not able to or available for work a majority of the week. As a result, he is not eligible to receive benefits as of March 7, 2004. (This means that if the claimant established what work he is able to and available to do with the March 11 work restrictions, the earliest he would have been eligible to receive benefits was March 14, 2004.)

The issue of overpayment is remanded to the Claims Section to determine the amount of benefits the claimant has been overpaid as of March 7, 2004.

DECISION:

The representative's March 12, 2004 decision (reference 12) is reversed. Even though the claimant was released to return to work as of March 11, 2004, he was released with work restrictions. The claimant did not establish what work he is able to or available to work with the

March 11 work restrictions. Therefore, as of March 7, the claimant is not eligible to receive unemployment insurance benefits. The claimant shall remain ineligible until he reopens his claim and establishes he is able to and available to work with the March 11 work restrictions or any other work restrictions he may have or may not have at the time. An issue of overpayment is remanded to the Claims Section to determine the amount of benefits the claimant has been overpaid as of March 7, 2004.

dlw/b