

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANTHONY MEYER
Claimant

APPEAL NO. 08A-UI-03409-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROYCO HOTELS INC
Employer

OC: 02/24/08 R: 03
Claimant: Appellant (1/R)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Anthony Meyer (claimant) appealed an unemployment insurance decision dated April 1, 2008, reference 01, which held that he was not eligible for unemployment insurance benefits because he is unable to work at this time due to an injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 22, 2008. The claimant participated in the hearing. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted and, therefore, did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the claimant is able and available to work?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was employed as a full-time night audit from May 2005 through August 2007 when he was reduced to part-time due to beginning school. The claimant went to the hospital on the night of February 20, 2008 due to a non-work-related medical injury. The emergency room placed the claimant on a knee brace and crutches. The claimant could not carry out the essential functions of his position and the employer was unable to accommodate his medical restrictions. The employer contacted the claimant on March 14, 2008 requesting a doctor's note. The claimant contacted his doctor who provided a medical statement indicating the claimant was to be non-weight bearing for two weeks. He provided that excuse to the employer on March 17, 2008. The claimant has not been released without restrictions. The employer discharged him on April 7, 2008.

The claimant has permanently separated from his employer but this issue has not yet been litigated. This case will be remanded for further determination

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code § 96.4(3) and 871 IAC 24.22.

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".

871 IAC 24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). He was placed on medical restrictions as of February 20, 2008 and has not been released without those restrictions. The claimant does not meet the availability requirements of the law and benefits are denied from February 24, 2008 through April 7, 2008.

During the hearing, issues arose as to the claimant's permanent separation from the employer on April 7, 2008. The separation issues were not included in the notice of hearing and this case is remanded for a determination on those issues.

DECISION:

The unemployment insurance decision dated April 1, 2008, reference 01, is affirmed. The claimant is not eligible for unemployment insurance benefits from February 24, 2008 through April 7, 2008. This case is remanded for further determination.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css