

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GARY L GRUBBS**  
Claimant

**APPEAL NO. 12A-UI-15291-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ENVIRONMENTAL SERVICES INC**  
Employer

**OC: 10/21/12  
Claimant: Appellant (1)**

Iowa Code Section 96.4 (3) - Able & Available

**STATEMENT OF THE CASE:**

The Appeals Section docketed timely claimant appeal from the December 18, 2012, reference 03, decision that denied benefits effective October 21, 2012, based on an agency conclusion that the claimant was unable to perform work due to injury. There's no indication that the claimant himself filed an appeal. After due notice was issued, a hearing was held on January 30, 2013. Claimant Gary Grubbs participated. Karen Bower, Office Manager, represented the employer. Employer Exhibits A through D were received into evidence. The administrative law judge took official notice of the agency's administrative record of benefits disbursed to the claimant. The hearing in this matter was consolidated with the hearing in appeal number 12A-UI-15214 -JTT.

**ISSUE:**

Whether Mr. Grubbs has met the workability and availability requirements since he established his claim for unemployment insurance benefits. He has not.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Gary Grubbs started his employment with Environmental Services, Inc., in March 2011 and last performed work for the employer on June 6, 2011. Mr. Grubbs worked as a full-time refuse truck driver. He operated a rear-load waste hauling truck. Mr. Grubbs went off work in June 2011 in response to a work injury to his left foot. A dumpster had been lowered onto his foot. Mr. Grubbs was subsequently diagnosed with nerve damage to his foot. Mr. Grubbs continued off work and participated in occupational therapy until September 2012. At that point, the worker's compensation doctor concluded that Mr. Grubbs had reached maximum medical improvement. Mr. Grubbs had an understanding with the employer's worker's compensation carrier that the carrier would facilitate his participation in vocational rehabilitation programming, but that did not materialize.

Mr. Grubbs last saw the doctor in September 2012. Neither the worker's compensation doctor nor any other doctor had released Mr. Grubbs to return to his previous duties or any other employment. That situation continued unchanged at the time Mr. Grubbs established claim for

unemployment insurance benefits that was effective October 21, 2012 and continued unchanged as of January 30, 2013 appeal hearing. Mr. Grubbs cannot wear a regular shoe and is required to wear an orthotic shoe/boot. Mr. Grubbs cannot wear the safety boots that were required safety equipment when he worked as a refuse truck driver. As of the January 30, 2013 appeal hearing, Mr. Grubbs was still taking multiple medications in connection with his foot injury. These included a pain reliever and a prescription muscle relaxer. As of the time of the January 30, 2013 appeal hearing, Mr. Grubbs was still experiencing problems with swelling and cramping in his foot and could not stand for longer than four hours without his foot becoming swollen. Mr. Grubbs is unable to drive and relies upon his son for transportation.

Mr. Grubbs never quit the employment. The employer never notified him he was discharged or laid-off from the employment. The employer did not contact Mr. Grubbs after June 2011 and Mr. Grubbs did not contact the employer after that date. Instead, both parties communicated with the worker's compensation carrier. The employer has never contacted Mr. Grubbs about performing light-duty work.

Mr. Grubbs has never contacted the Iowa Department of vocational rehabilitation, though he believes that is the next step in the process of working towards returning to work. Mr. Grubbs has applied for some prospective jobs and has done so primarily via the Internet. At the time of the appeal hearing, Mr. Grubbs had minimal information available concerning his job search activities. During the week that ended October 27, 2012, Mr. Grubbs applied for two commercial driving positions he cannot perform due to his foot injury. Mr. Grubbs was unable to state what work search efforts he had made for the week ending November 3, 2012. During the week that ended November 10, 2012, Mr. Grubbs applied for a prep cook job at a restaurant owned by his niece's family. During that same week, Mr. Grubbs applied for a job at Wal-Mart. During the week that ended November 17, 2012, Mr. Grubbs applied for part-time jobs at Target and at Sam's Club. Mr. Grubbs was unable to state what work search activities he had engaged in during the week that ended November 24, 2012. During the weeks that ended December 1 and December 8, 2012, Mr. Grubbs applied for additional commercial driving jobs he cannot perform due to his foot injury. Mr. Grubbs was unable to provide any additional information concerning his work search activities since the week that ended December 1, 2012.

#### **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.

871 IAC 24.23(35) provides:

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

(35) Where the claimant is not able to work and is under the care of a physician and has not been released as being able to work.

The weight of the evidence in the record establishes that Mr. Grubbs has not met the work ability and work availability requirements of the law since he established his claim for unemployment insurance benefits. The evidence indicates that Mr. Grubbs has a permanent physical impairment that substantially impacts on the types of work he *might* be able to perform. The weight of the evidence fails to establish whether Mr. Grubbs is able to perform *any* work at this time. Mr. Grubbs himself acknowledges that he needs the assistance of vocational rehabilitation programming to learn a new skill so that he can become reemployed. Mr. Grubbs was under the care of a physician at the time he established his claim for benefits, but has never presented any medical documentation to Workforce Development to indicate that he has been released to return to any type of work. Mr. Grubbs has not made an active and earnest search for new employment since he filed his claim. Instead, when Mr. Grubbs has engaged in any search for new employment, he has focused primarily on driving work he cannot do because of his foot injury. The weight of the evidence indicates Mr. Grubbs would be unable to perform the other types of jobs he has applied for. Because Mr. Grubbs has not demonstrated the ability to perform full-time work or availability for full-time work since he filed his claim for benefits, Mr. Grubbs is not eligible for benefits. Benefits are denied effective October 21, 2012. The able and available disqualification continued as of the January 30, 2013 appeal hearing.

**DECISION:**

The Agency representative's December 18, 2012, reference 03, decision is affirmed. The claimant has been unable to work and unavailable for work due to injury since he established his claim for benefits. Benefits are denied effective October 21, 2012. The able and available disqualification continued as of the January 30, 2013 appeal hearing.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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