

**BEFORE THE
EMPLOYMENT APPEAL BOARD
Lucas State Office Building
Fourth floor
Des Moines, Iowa 50319**

DARIN E HOUSE

Claimant,

and

WRIGHT TREE SVC INC

Employer.

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HEARING NUMBER: 10B-UI-17527

**EMPLOYMENT APPEAL BOARD
DECISION**

SECTION: 10A.601 Employment Appeal Board Review

FINDINGS OF FACT:

The claimant, Darin House, began his employment May 25th, 2000. (Tr. 3, 5) He suffered a seizure (Tr. 6) and his physician consequently restricted him from working at heights and driving through January 2, 2010. (Tr. 6) Beginning July 2, 2009 (Tr. 4), he went on FMLA, which expired on September 28, 2009. (Tr. 4) Mr. House had not yet received a full medical release to return to work. (Tr. 4,

The claimant is receiving short-term disability benefits of which the premiums are fully paid by the employer. (Tr. 5, 6) As of the hearing, the claimant had yet to be released without restrictions. The claimant filed for benefits. A hearing in the above matter was held December 30, 2009. The administrative law judge's decision was issued January 4, 2010, which determined that the claimant was disqualified because he was not able and available for work. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 10A.601(4) (2005) provides:

5. Appeal board review. The appeal board may on its own motion affirm, modify, or set aside any decision of an administrative law judge on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. The appeal board shall permit such further appeal by any of the parties interested in a decision of an administrative law judge and by the representative whose decision has been overruled or modified by the administrative law judge. The appeal board shall review the case pursuant to rules adopted by the appeal board. The appeal board shall promptly notify the interested parties of its findings and decision.

24.22(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 record as it stands is not sufficient for the Board to render a decision. There was no evidence adduced as to whether the claimant remains an employee or whether the claimant is able to perform other work in the general labor market. Because these questions are unanswered, this matter is remanded for further consideration.

DECISION:

The decision of the administrative law judge dated August 19, 2009 is not vacated. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section, for further development of the record consistent with this decision, unless otherwise already addressed. The administrative law judge shall conduct a hearing following due notice, if necessary. If a hearing is held, then the administrative law judge shall issue a decision which provides the parties appeal rights.

John A. Peno

Elizabeth L. Seiser

Monique F. Kuester

AMG/ss