

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOHAMMAD A GHABBASH
Claimant

APPEAL NO. 10A-UI-06932-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PSI GROUP INC
Employer

OC: 03/07/10
Claimant: Appellant (1)

Section 96.4(3) – Able and Available

STATEMENT OF THE CASE:

Mohammad Ghabbash filed an appeal from a representative's decision dated April 28, 2010, reference 01, which denied benefits effective March 7, 2010 on a finding that he was not able to work due to injury. After due notice was issued, a hearing was held by telephone on July 1, 2010. Mr. Ghabbash participated personally and was represented by John Hemminger, Attorney at Law. Magda Salama participated as the interpreter. The employer did not respond to the notice of hearing. The hearing record was left open to receive additional documentation, which has been received and admitted on Mr. Ghabbash's behalf as Exhibit A.

ISSUE:

At issue in this matter is whether Mr. Ghabbash has satisfied the availability requirements of the law since filing his claim effective March 7, 2010.

FINDINGS OF FACT:

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Ghabbash began working for PSI Group, Inc. on October 8, 2008 and last performed services on February 2, 2010. He worked full-time as a mail handler. Prior to that date, he had been restricted from lifting more than 20 pounds above his shoulders and for no more than four hours each day. He was also undergoing physical therapy. On March 4, 2010, his doctor advised that he complete physical therapy before returning to work. He completed physical therapy in June of 2010.

On May 24, 2010, Mr. Ghabbash's doctor advised that he remain off work until August 24, 2010. He is to be rechecked on that date after having three months off. He has not claimed job insurance benefits since the week ending May 22, 2010.

REASONING AND CONCLUSIONS OF LAW:

In order to receive job insurance benefits, an individual must be able to engage in work activity. Iowa Code section 96.4(3). Mr. Ghabbash has been unable to work since filing his claim for benefits effective March 7, 2010. As of that date, his doctor had recommended that he not

perform work activity while undergoing physical therapy. The doctor's note does not indicate that he could perform light or restricted duty while undergoing therapy. The doctor had already imposed lifting restrictions in November to deal with the pain in his arms and shoulders. The administrative law judge must presume that the doctor would not have taken him off light-duty work in March if he had the ability to perform restricted duty while undergoing therapy. For the above reasons, it is concluded that the doctor intended to preclude all work activity while Mr. Ghabbash was undergoing physical therapy.

Mr. Ghabbash completed physical therapy in June of 2010. However, by that time, he had received another doctor's statement taking him off work for three months. The doctor's note dated May 24, 2010 does not indicate any work restrictions, only that he is to be off work for three months. Inasmuch as the note does not indicate he could work light or restricted duty, the administrative law judge concludes that Mr. Ghabbash was not able to work in any job as of May 24, 2010. Moreover, the issue appears to be somewhat moot, as he has not claimed benefits since the week ending May 22, 2010 and has not been searching for work. Even if he were able to work, his failure to conduct a work search would disqualify him from receiving benefits pursuant to section 96.4(3).

After considering all of the evidence, the administrative law judge concludes that Mr. Ghabbash has not satisfied the availability requirements of the law at any point since March 7, 2010. He will be denied benefits until such time as he provides proof from his doctor that he is again able to work.

DECISION:

The representative's decision dated April 28, 2010, reference 01, is hereby affirmed. Mr. Ghabbash has not satisfied the availability requirements of the law since filing his claim effective March 7, 2010. Benefits are withheld until he provides proof to his local Workforce Development office that he is able to and available for work, provided he is otherwise eligible.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw