

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIAN E MORRISON**  
Claimant

**APPEAL NO. 13A-UI-11823-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRECISION BEND & MACHINE CO**  
Employer

**OC: 09/22/13**  
**Claimant: Appellant (1)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Brian Morrison filed a timely appeal from the October 10, 2013, reference 04, decision that denied benefits effective September 22, 2013 based on an agency conclusion that he was not able to perform work due to injury. After due notice was issued, a hearing was held on November 14, 2013. Mr. Morrison participated. Tracy Morrow represented the employer.

**ISSUE:**

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Brian Morrison established a claim for benefits that was effective September 22, 2013. At the time Mr. Morrison established his claim for benefits, he was under the care of a doctor for an illness that was eventually diagnosed as an autoimmune deficiency. Mr. Morrison's doctor had taken him off work. Mr. Morrison was released by his doctor to return to work on October 17, 2013. However, since that time, Mr. Morrison has not looked for work or applied for any jobs. In addition, Mr. Morrison has not continued his claim for benefits by making a weekly claim to Iowa Workforce Development via the Internet or via the automated voice response unit. Instead, Mr. Morrison has elected to help his friend with odd jobs that include working on cars and putting on a steel roof.

**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".

Iowa Administrative Code rule 871 IAC 24.23 provides, in relevant part, as follows:

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

**24.23(1)** An individual who is ill and presently not able to perform work due to illness.

**24.23(7)** Where an individual devotes time and effort to becoming self-employed.

**24.23(23)** The claimant's availability for other work is unduly limited because such claimant is working to such a degree that removes the claimant from the labor market.

**24.23(27)** Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek work.

**24.23(28)** A claimant will be ineligible for benefits because of failure to make an adequate work search after having been previously warned and instructed to expand the search for work effort.

**24.23(34)** Where the claimant is not able to work due to personal injury.

**24.23(35)** Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

From September 22, 2013 through Wednesday October 16, 2013, Mr. Morrison was under the care of a physician, had been taken completely off work, and was not released to work. Prior to October 17, 2013, Mr. Morrison did not meet the work ability and availability requirements and was not eligible for benefits. Since Mr. Morrison was released by his doctor to return to work, he has not looked for employment and has not made a weekly claim for benefits. Instead, he has dedicated his time and energy to what are essentially self-employment projects helping his friend. The evidence establishes that Mr. Morrison has not been available for work within the meaning of the law since he established his claim. Benefits are denied effective September 22, 2013. The able and available disqualification continued as of the November 14, 2013, appeal hearing and will continue until Mr. Morrison demonstrates that he is physically and mentally able to work, available for work and work referrals, and actively and earnestly seeking new employment.

#### **DECISION:**

The agency representative's October 10, 2013, reference 04 is affirmed. The claimant was not able to work within the meaning of the law prior to October 17, 2013. The claimant has not been available for work within the meaning of the law and has not engaged in a work search

since he established his claim for benefits. Benefits are denied effective September 22, 2013. The able and available disqualification continued as of the November 14, 2013, appeal hearing and will continue until the claimant demonstrates that he is physically and mentally able to work, available for work and work referrals, and actively and earnestly seeking new employment.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/pjs