

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS D SCHULT
Claimant

APPEAL NO. 12A-UI-00264-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

JENSEN BUILDERS LTD
Employer

**OC: 09/18/11
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available
871 IAC 24.23(6) – Unable to Work/Doctor Restriction
871 IAC 24.23(5) – Full-time Student

STATEMENT OF THE CASE:

The claimant appealed from a representative's decision dated January 4, 2012, reference 03, that held he was unable to perform work due to injury effective September 18, 2011, and benefits are denied. A hearing was held on February 6, 2012. The claimant participated. Tom Nelson, HR Director, participated for the employer.

ISSUE:

The issue is whether claimant is able and available to work.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony, and having considered the evidence in the record, finds that: The claimant last worked for the employer as a full-time carpenter on September 17, 2011. An ALJ issued a decision on October 12, 2011 (Appeal Number 11A-UI-13707-JTT) that held claimant was discharged for no act of misconduct by the employer, and benefits are allowed. Since the employment separation involved a claimant injury where a doctor had imposed a work restriction, the ALJ remanded this matter for a decision. The employer did not appeal.

Claimant was diagnosed with a repetitive motion type injury to his left wrist, and his primary care physician issued a September 19 letter that restricted him to light duty with minimal use of his left hand and forearm. He presented it to the employer, and it reasoned he could not work his regular job as carpenter and it had no other job he could do.

Claimant has seen a specialist at the McFarland clinic who has diagnosed tendonitis and referred him to nerve study testing. Claimant is going to be evaluated by a neurologist on February 21, 2012.

In August 2011, claimant began on-line full-time student status at DMAC in a pre-engineering program. He is required to attend some onsite schooling in addition to his online work. His long

range goal is to transfer to a four-year school for an engineering degree. He is hopeful that might secure a work-study program.

He is willing to consider a superintendent or foreman construction position. He recently was offered a foreman position at Woodrift Construction but declined it due to paying only \$17.48 an hour. His department average weekly wage is \$649.99 based on 18-weeks of unemployment (65 percent).

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 24.23(5) provides:

(5) Full-time students devoting the major portion of their time and efforts to their studies are deemed to have no reasonable expectancy of securing employment except if the students are available to the same degree and to the same extent as they accrued wage credits they will meet the eligibility requirements of the law.

The administrative law judge concludes claimant does not meet the availability requirements of the law, and benefits are denied effective September 18, 2011.

Being a full-time student with a four year college degree goal coupled with a work restriction that limits claimant from doing the type of work where he has experience, are substantial factors that make claimant not able and available for work. He has been unemployed for 20 weeks. He remains under doctor care and treatment. He is a full-time student. He turned down a construction foreman job that is suitable work given the wage and the period of his unemployment

DECISION:

The decision of the representative dated January 4, 2012, reference 03, is affirmed. The claimant does not meet the availability requirements of the law effective September 18, 2011.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css