IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

STEVEN STEINBERG
Claimant

APPEAL NO: 08A-UI-03971-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALUM LINE INC
Employer

**OC: 03/23/08   R: 04
Claimant: Appellant (1)**

Iowa Code § 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Steven Steinberg (claimant) appealed an unemployment insurance decision dated April 14, 2008, reference 02, which held that he was not eligible for unemployment insurance benefits because he was unable to work for Alum Line, Inc. (employer) at this time due to a work-related injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 7, 2008. The claimant participated in the hearing. The employer participated through Gary Gooder, President and Dee Farrell, Accountant. Claimant's Exhibit A was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired as a part-time delivery person on November 13, 2007. The employer testified the claimant was unable to work as of February 29, 2008. In a letter dated April 14, 2008, the claimant's physician indicated the claimant was in a cast and crutches and is unable to work unless the work was "sedentary handicapped access work." The claimant cannot carry out the essential functions of his position with his current non-work-related medical restrictions and the employer has no work within those restrictions. The claimant's physician indicated if the restricted work is not available, the claimant should be considered out of work for approximately three months.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work.

Iowa Code § 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(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 claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). The claimant's physician indicated the claimant is in a cast and crutches due to a non-work-related injury. He cannot perform his regular job duties and is only able to perform sedentary handicapped access work. The employer has no work within those restrictions. The claimant does not meet the availability requirements of the law as of March 23, 2008 and benefits are denied.

DECISION:

The unemployment insurance decision dated April 15, 2008, reference 02, is affirmed. The claimant does not qualify to receive unemployment insurance benefits.

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Susan D. Ackerman
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs