

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JARRAD A PIKE
Claimant

APPEAL NO: 13A-UI-13756-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 11/24/13
Claimant: Appellant (2/R)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Jarrad A. Pike (claimant) appealed a representative's December 6, 2013 decision (reference 02) that concluded he was not qualified to receive unemployment insurance benefits because he was not able and available for work. After hearing notices were mailed to the claimant's last-known address of record, a telephone hearing was held on January 13, 2014. This appeal was consolidated for hearing with one related appeal, 13A-UI-13757-DT. The claimant participated in the hearing and was represented by John Jordan, attorney at law. During the hearing, Claimant's Exhibit A was entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the claimant eligible for unemployment insurance benefits by being able and available for work?

FINDINGS OF FACT:

The claimant had a separation from Hach Company (employer) on October 21, 2013. He had been off work due to a sprain to his right elbow through October 18; on October 18 the claimant obtained a release to return to work from his doctor. There were light-duty restrictions contained in the release consisting of no lifting/pushing/pulling of over five pounds with his right arm, no repeated firm gripping/twisting with the right hand, and no repetitive extended use of the right arm to reach, grasp, lift, push, or pull. When the claimant sought to return to work in his position as operator on October 21 with the doctor's release, he instead was advised that he was discharged.

The claimant then reactivated his then existing unemployment insurance claim from November 25, 2012 by filing an additional claim October 20, 2013, and then a new claim for unemployment insurance benefits effective November 24, 2013. Since October 18, 2013 the claimant would be able to do many manufacturing jobs with his current restrictions, even his prior position as operator. He has been making a work search for such positions.

The employer had protested the separation from employment as being disqualifying. A fact-finding interview was conducted between the parties on or about December 5, 2013. The fact-finding interview was set up and information gathered so as to make a determination with regard to the separation from employment, but no decision regarding the separation was then or has since been issued.

REASONING AND CONCLUSIONS OF LAW:

With respect to any week in which unemployment insurance benefits are sought, in order to be eligible the claimant must be able to work, is available for work, and is earnestly and actively seeking work. Iowa Code § 96.4-3. To be found able to work, "[a]n individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but which is engaged in by others as a means of livelihood." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); 871 IAC 24.22(1). The claimant has demonstrated that since October 18, 2013 he is able to work in some gainful employment. Benefits are allowed, if the claimant is otherwise eligible.

The matter is remanded to the Claims Section for determination of the separation issue.

DECISION:

The representative's December 6, 2013 decision (reference 02) is reversed. The claimant is able to work and available for work effective October 20, 2013. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The matter is remanded to the Claims Section for determination of the separation issue.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css