

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GORDON L WILSON
Claimant

APPEAL NO: 17A-UI-08360-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

OC: 05/28/17
Claimant: Appellant (4)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Gordon Wilson (claimant) appealed a representative's August 14, 2017 decision (reference 03) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to work with Aerotek (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for September 1, 2017. The claimant participated personally. The employer did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. The claimant offered and Exhibits A and B were received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The employer was a temporary employment firm. The claimant worked for the employer from 2015, to May 28, 2015. He was assigned to work at Kemin Food Technologies as a machine operator. The claimant developed a hernia and on May 31, 2017, the claimant's physician said he was unable to work because he was scheduled for surgery. Because he was unable to perform his job functions, his assignment ended. The claimant did not seek reassignment from the employer because he needed to lower his income to be eligible for state insurance to afford the surgery.

The claimant had his surgery on July 12, 2017. His surgeon restricted him to no lifting greater than ten pounds until August 23, 2017. He has not seen his surgeon again. On August 25, 2017, the claimant saw his regular doctor who did not issue any work restrictions.

On August 23, 2017, the claimant started working for Enterprise Rent-A-Car as a part-time evening worker. He is available to work a full-time shift during the day.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able and available for work.

Iowa Admin. Code r. 871-24.23(1) provides:

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

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

When an employee is ill and unable to perform work due to that medical condition, he is considered to be unavailable for work. The claimant was restricted to no lifting greater than ten pounds until August 23, 2017. His restriction was so limiting as to make him unavailable for work in the kind of work the claimant had been performing for the employer. The claimant is disqualified from receiving unemployment insurance benefits due to his unavailability for work.

DECISION:

The representative's August 14, 2017, decision (reference 03) is modified in favor of the appellant. Benefits are allowed as of August 27, 2017, provided the claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs