

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT J BENGÉ
Claimant

APPEAL NO: 17A-UI-11581-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

THEISENS INC
Employer

**OC: 10/08/17
Claimant: Appellant (1)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Scott Bengé (claimant) appealed a representative's October 31, 2017, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he is unable to perform work with Theisens (employer). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for December 4, 2017. The claimant was represented by Samuel Aden, Attorney at Law, and participated personally. Jill Dale, the claimant's significant other, observed the hearing. The employer participated by Dan Connolly, Risk Management Loss Prevention Manager, and Heidi Bergfeld, Human Resources Administrator. The claimant offered and Exhibit A was received into evidence. The employer offered and Exhibit 1 was 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 claimant was hired on January 9, 2012, as a full-time automotive service person. The claimant signed for receipt of the employer's handbook on January 29, 2012. He signed for an updated online version of the handbook on September 20, 2016.

The claimant suffered a work-related injury to his bicep and shoulder on May 14, 2017. He returned to work with restrictions. In October 2017, the claimant was restricted to no lifting over five pounds with his left arm and no use of his right arm. On October 6, 2017, the claimant brought in a tire that needed to be repaired and left it by the employer's back door before he started work. A co-worker fixed the tire during the claimant's workday. Before he left for the day, the claimant put the invoice for payment on a clipboard. He did not take the invoice to a register and pay for the work that was done. At the end of his shift, his significant other arrived at the shop door and the two loaded the repaired tire in the vehicle along with the employer's floor jack. The claimant thought he asked the employer if he could borrow the jack but the employer did not give the claimant permission to take the jack from the property.

On October 7, 2017, the claimant was not scheduled to work. He entered the employer's property through the shop door and searched for the invoice. When the claimant could not find the invoice, he asked the manager for the invoice. The claimant did not mention wanting to pay for the tire until the employer asked the claimant if he took the tire without paying for it. The claimant said he "screwed up" and he did not have the money on October 6, 2017. The claimant paid for the tire on October 7, 2017. On October 11, 2017, the employer questioned the claimant as part of its investigation. It terminated the claimant on October 11, 2017, for theft of company property.

The claimant filed for unemployment insurance benefits with an effective date of October 8, 2017. On November 1, 2017, the claimant's doctor issued a note stating the claimant cannot lift over two or three pounds. He must limit his repetitive and overhead lifting.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is not able to work at this time.

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 illness, he is considered to be unavailable for work. The claimant's restrictions are extensive. The claimant is disqualified from receiving unemployment insurance benefits due to his unavailability for work. Should his situation change, he can provide a doctor's note to the department.

DECISION:

The representative's October 31, 2017, decision (reference 02) is affirmed. The claimant is disqualified from receiving unemployment insurance benefits because he is not available for work. Should his situation change, he can provide a doctor's note to the department.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs