

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L PARIZEK JR
Claimant

APPEAL NO. 08A-UI-01290-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

YOUNG INDUSTRIES INC
Employer

**OC: 12/23/07 R: 02
Claimant: Appellant (1)**

Iowa Code § 96.4(3) - Able and Available

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the January 29, 2008, reference 02, decision that denied benefits from December 23, 2007 through January 5, 2008. After due notice was issued, a telephone conference hearing was held on February 20, 2008. Claimant participated with his spouse, Nanci Parizek. Employer participated through Leon Young, president, and Steve Young, vice president.

ISSUE:

The issue is whether claimant is able to and available for work from December 23, 2007 through January 5, 2008.

FINDINGS OF FACT:

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant was employed as a full time laborer, operator, and crew leader from 2000 until October 1, 2007, when he was discharged. He was severely burned at home on August 25, 2007 and was hospitalized in the burn unit of University of Iowa Hospital through September 4, 2007. He was released to go home with continued physical therapy, skin graft treatment, and related surgeries. Claimant was released to return to work without restriction on January 7, 2008.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is able to work and available for work effective the week beginning January 6, 2008.

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 24.22(2) provides:

Benefits eligibility conditions. For an individual to be eligible to receive benefits the department must find that the individual is able to work, available for work, and earnestly and actively seeking work. The individual bears the burden of establishing that the individual is able to work, available for work, and earnestly and actively seeking work.

(2) Available for work. The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

Since claimant was not medically released to return to work until January 7, 2008, benefits are withheld for the two-week period ending January 5 and allowed effective January 6, 2008.

DECISION:

The January 29, 2008, reference 02, decision is affirmed. The claimant is able to work and available for work effective January 6, 2008.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw