

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MALAG MENYON**  
Claimant

**TPI IOWA LLC**  
Employer

**APPEAL 16A-UI-09913-JC**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/07/16**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the August 30, 2016, (reference 02) unemployment insurance decision that denied benefits based upon the claimant being unable to work due to an injury. After due notice was issued, a hearing was held on September 27, 2016, in Des Moines, Iowa. The claimant participated personally. The employer did not appear or contact the Appeals Bureau prior to the hearing. Department exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the administrative records including the fact-finding documents. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Is the claimant able to work and available for work effective August 7, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant is employed full-time in production at TPI Iowa LLC. The claimant has not worked since May 20, 2016. On May 21, 2016, the claimant was in a car accident en route to work, and consequently broke his right arm. The claimant has not separated from employment. The claimant does not want to separate from employment and wants to resume working. The claimant saw his doctor in July and was placed on a ten-pound lifting restriction (Department exhibit D-2). He will visit the doctor again in October, but has not yet been released without restrictions. The employer informed him that even though he wants to work, he cannot return until he has no restrictions.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able to work 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".

Iowa Admin. Code r. 871-24.22(1)a 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.

(1) Able to work. An 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.

a. Illness, injury or pregnancy. Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. A pregnant individual must meet the same criteria for determining ableness as do all other individuals.

Iowa Admin. Code r. 871-24.23(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 employer is not obligated to accommodate a non-work related medical condition. The administrative law judge recognizes the claimant's desire to return back to work as soon as possible. While he may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since he has not been released to perform his full work duties, he is not considered able to or available for work beginning August 7, 2016. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

**DECISION:**

The August 30, 2016, (reference 02) unemployment insurance decision is affirmed. The claimant is unable to work and available for work effective August 7, 2016. Benefits are withheld until such time as the claimant obtains a full medical release to return to work unless he is involuntarily separated before that time.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

jlb/pjs