

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VATHANA LOVAN
Claimant

APPEAL NO. 11A-UI-11105-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

TITAN TIRE CORPORATION
Employer

**OC:07/17/11
Claimant: Appellant (2)**

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

The claimant filed an appeal from a decision of a representative dated August 18, 2011, reference 02, which held claimant ineligible for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on September 14, 2011. Claimant participated. The claimant was represented by Martin Ozga, attorney at law. The employer did respond to the hearing notice but the representative was not available when called by the administrative law judge for the hearing. A detailed message was left on how to participate in the hearing. The employer did not call in during the hearing. The record consists of the testimony of Vathana Lovan and Claimant's Exhibits A-D.

ISSUE:

Whether the claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant began working for the employer on July 1, 1997. He was a banner operator. The claimant sustained a work-related injury on March 17, 2009. He was transferred to a different job as a fork lift operator and stockperson due to restrictions following his work-related injury.

The employer engaged the services of a physical therapist to study the job the claimant was performing in July 2010. The physical therapist concluded that the claimant's new job violated his restrictions. The claimant was laid off by the employer on July 22, 2010.

The claimant established an original claim for benefits with an original claim date of July 18, 2010. The claimant began receiving weekly benefits and was converted to emergency unemployment compensation benefits (EUCU) benefits for the week ending January 29, 2011. He received EUCU benefits through the week ending July 16, 2011. He established a new claim with an effective date of July 17, 2011. He was disqualified as being unable to perform work and benefits were denied as of July 17, 2011.

The claimant is physically capable of working. He is 37 years old and has worked as a casino dealer and automobile mechanic. He has looked for work as a service advisor and a parts person at an automotive store. Although the claimant has some physical restrictions as a result of his work-related injury, his physicians believe that he is employable and capable of working within his restrictions.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 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.

The evidence in this case established that as of July 17, 2011, the claimant is able and available for work. He may not be able to do the job he was doing at the time of his work related injury, but is capable of gainful employment in jobs that are performed by other individuals as a means of livelihood. His physicians agree that he is employable at this time within his physical capabilities and tolerances. Benefits are therefore allowed as of July 17, 2011, if the claimant is otherwise eligible.

DECISION:

The decision of the representative dated August 18, 2011, reference 02, is reversed. The claimant is able and available for work as of July 17, 2011. Benefits are allowed, if the claimant is otherwise eligible.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs