

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DANIEL WEST**  
Claimant

**APPEAL NO: 12A-UI-05394-B**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**OC: 04/01/12  
Claimant: Appellant (4)**

Iowa Code § 96.4-3 - Able and Available for Work

**STATEMENT OF THE CASE:**

Daniel West (claimant) appealed an unemployment insurance decision dated May 1, 2012, reference 02, which held that he was not eligible for unemployment insurance benefits because he is not able and available to work due to a medical injury. After hearing notices were mailed to the parties' last-known addresses of record, a hearing was held in Des Moines, Iowa on June 18, 2012. The claimant participated in the hearing with Attorney Erin Benoy. The claimant's wife, Karen West, was present for the hearing but did not participate. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the claimant was able and available to 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 most recently working for Hammer Medical Supply but became separated from that position. It was a heavy labor position but he also worked as a driver. He sustained a work-related injury in May 2011 and was still under unknown medical restrictions from that injury.

The claimant sustained serious injuries in a motorcycle accident on December 31, 2011. He testified he was released to return to work on May 5, 2012 with a ten-pound lifting restriction, as well as no overhead work and no piece work. His treating physician, Karen Kieniker, M.D., provided a letter dated March 27, 2012 that he would not be able to return to work for at least another three or four months. Dr. Kieniker provided another letter dated April 23, 2012 stating the claimant may lift up to ten pounds occasionally, but cannot perform repetitive reaching with his left arm or reach above his shoulder with his left arm.

The claimant has mostly worked heavy labor positions. He testified that he has worked in a parts shop answering the phone but did not provide any other work experience within his current medical restrictions.

**REASONING AND CONCLUSIONS OF LAW:**

The issue to be determined is whether the claimant is able and available for work. In order for an individual to be eligible to receive unemployment insurance benefits, the evidence in the record must establish that he is able to work, available for work, and earnestly and actively seeking work. See Iowa Code §96.4(3) and 871 IAC 24.22. An individual must be physically and mentally able to work in some gainful employment, not necessarily in the individual's customary occupation, but that which is engaged in by others as a means of livelihood. 871 IAC 24.22(1). Each case is decided upon an individual basis, recognizing that various work opportunities present different physical requirements. See 871 IAC 24.22(1)(a).

The claimant has the burden of proof in establishing his ability and availability for work. *Davoren v. Iowa Employment Security Commission*, 277 N.W.2d 602 (Iowa 1979). A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. See 871 IAC 24.22(1)(a). Although the claimant is extremely limited in the types of work he can perform, his physician does indicate that he is medically able to perform work within certain restrictions. Consequently, the claimant does meet the availability requirements of the law as of April 23, 2012. Benefits are allowed, provided he is otherwise eligible

**DECISION:**

The unemployment insurance decision dated May 1, 2012, reference 02, is modified in favor of the appellant. Benefits are allowed as of the week ending April 28, 2012, provided the claimant is otherwise eligible.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/pjs