

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GATWECH R BIET

Claimant

APPEAL NO. 14A-UI-13160-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PACKERS SANITATION SERVICES INC

Employer

OC: 09/07/14

Claimant: Respondent (2)

Iowa Code Section 96.4(3) – Able & Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the December 12, 2014, reference 03, decision that allowed benefits to the claimant effective December 7, 2014, provided he was otherwise eligible, based on an Agency conclusion that the claimant was medically able to work and available work effective December 7, 2014. After due notice was issued, a hearing was held on January 15, 2015. Claimant Gatwech Biet participated. Colton Nelson, Site-Manager for the JBS site in Marshalltown, represented the employer. The administrative law judge took official notice of the Agency's administrative record concerning benefits disbursed to the claimant, which record indicates that no benefits have been disbursed to the claimant since he established an original claim that was effective September 7, 2014. Exhibit D-1 was received into evidence.

ISSUES:

Whether the claimant has been able to work and available for work since November 30, 2014.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Biet Gatwech established an additional claim for benefits that was effective November 30, 2014, but has not received any benefits in connection with the claim due to another decision that disqualified him for benefits based on a discharge for misconduct. In August 2014, Mr. Biet suffered injury to his right wrist in a non-work related fight. Mr. Biet underwent surgery on his wrist on August 26, 2014. The procedure included placement of two screws in the bones of Mr. Biet's wrist. The doctor released Mr. Biet to return to work, but restricted him lifting more than 10 pounds. Mr. Biet's employer at the time, Packer's Sanitation, told Mr. Biet that the company would have no work for Mr. Biet until he was released to return to work without restrictions.

On December 9, 2014, Mr. Biet was released to return to some type of work with a 5 to 10-pound lifting restriction. Mr. Biet's doctor also referred Mr. Biet for physical therapy. Mr. Biet was supposed to return to his doctor, but did not keep the appointment because he lacked insurance or other funds to pay for medical services.

Mr. Biet has not made an active search for new employment. During multiple weeks since Mr. Biet established the additional claim that was effective November 30, 2014. During at least four weeks since Mr. Biet established the additional claim, he made no job contacts. During other weeks, Mr. Biet made one employer contact. During the only week when Mr. Biet made two job contacts, one of the contacts was a meat packing plant, where a reasonable person would not expect a person with an injured wrist to obtain employment.

REASONING AND CONCLUSIONS OF LAW:

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, (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.

(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.

(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.

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.

Mr. Biet has presented insufficient evidence to establish that he has been able to perform full-time work or that he has been available for full-time and engaged in an active and earnest search for new full-time work since he filed his claim for benefits. Mr. Biet has an injury that required surgery and continues under significant medical restrictions. Mr. Biet has barely performed any work search. Mr. Biet has been referred for physical therapy, but apparently lacks funds for follow up medical care. Mr. Biet is ineligible for benefits effective November 30, 2014. His ineligibility, based on the able and available requirement, continued as of January 15, 2015 appeal hearing.

DECISION:

The December 12, 2014, reference 03, decision is reversed. The claimant has not been able and available for work since establishing an additional claim for benefits effective November 30, 2014. The claimant is ineligible for benefits effective November 30, 2014. His ineligibility, based on the able and available requirement, continued as of January 15, 2015 appeal hearing.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs