

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFERY L PEARSON**

Claimant

**MIDWEST SCAFFOLD SERVICE LLC**

Employer

**APPEAL 18A-UI-09364-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/15/18**

**Claimant: Appellant (1)**

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Iowa Code § 96.4(3) – Ability to and Availability for Work  
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/appellant, Jeffery L. Pearson, filed an appeal from the August 30, 2018 (reference 05) unemployment insurance decision that denied benefits. After proper notice, a telephone hearing was conducted on September 27, 2018. The hearing was held jointly with Appeals 18A-UI-09363-JC-T and 18A-UI-09362-JC-T. The claimant participated personally. Amy Farrell attended as an observer only. The employer did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing.

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 and available for work effective August 26, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a builder/carpenter and was permanently separated from employment on August 21, 2018 (See Appeal 18A-UI-09362-JC-T). Prior to separation, the claimant injured his knee while hiking and unable to work without restrictions pursuant to medical advice from a treating physician.

After separation, and after applying for unemployment insurance benefits, the claimant informed Iowa Workforce Development that he was not “100%” (see Appeal letter) and stated at his August 29, 2018 fact-finding interview that his knee was 75% (See fact-finding statement/administrative records). The claimant has not furnished Iowa Workforce Development a letter from his treating physician outlining the restrictions he has or alternately, that he is able to return to employment without restrictions (Claimant testimony).

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective August 26, 2018.

For an individual to be eligible to receive benefits, he must be able to work, available for work, and actively seeking work as required by the unemployment insurance law. Iowa Code § 96.4(3). The claimant has the burden to show he is able to work, available for work, and earnestly and actively seeking work.

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 medical practitioner and has not been released as being able to work.

In this case, the evidence fails to establish the claimant is able to and available for work as defined by the unemployment insurance law. The claimant has acknowledged that he is not recovered from a personal injury to his knee but has not provided sufficient evidence to establish what kind of restrictions he has, which would allow him to perform work. Accordingly, the administrative law judge cannot conclude the claimant is able and available for work. Benefits are denied effective August 26, 2018, until the claimant obtains a medical release to return to work which he is capable of performing given his education, training, and work experience.

**DECISION:**

The August 30, 2018 (reference 05) initial decision is affirmed. The claimant is not able to and available for work effective August 26, 2018. Benefits are withheld until such time as the claimant obtains a medical release to return to work which he is capable of performing given his education, training, and work experience.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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