

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERIAHMIA B PEARCE

Claimant

APPEAL NO. 09A-UI-17304-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SLEEP EAZY INC

Employer

OC: 10-11-09

Claimant: Respondent (2)

Section 96.4-3 - Able and Available

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 9, 2009, reference 02, decision that allowed benefits. After due notice was issued, a hearing was held on December 23, 2009. The claimant did not participate. The employer did participate through Bob Voge, Owner and Dan Dohlman, Manager.

ISSUE:

Was the claimant able and available for work.

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant was employed as a warehouse worker/delivery driver full time beginning April 28, 2004 through November 20, 2009 when his employment ended. The claimant's separation from work was handled by another fact-finding decision and the separation is not at issue here.

The claimant was off work for a non-work-related back injury from May 2009 until October 5, 2009. Neurosurgeon David M. Beck, M.D., the only physician to offer an opinion in this record, indicates that the claimant's back problems were not work related. When he returned to work the claimant reported to the employer that he was no longer able to do any of the heavy moving and lifting of furniture he had performed prior to his leave of absence. The claimant did not have any work restrictions from a physician, but told the employer what his abilities were. The employer did not require the claimant to perform any work that he said he could not do. The employer offered the claimant what light-duty warehouse work they could and offered him the ability to work on weekends to make up hours. The claimant refused the weekend work hours. The only reason the claimant did not return to the same job and duties he had performed prior to his leave of absence was because of the limitations he placed on the work he would perform.

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 effective October 5, 2009.

Iowa Code section 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".

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.

871 IAC 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.

Inasmuch as the injury was not work related and the claimant told the employer he was not able to return to work performing his prior job functions, the administrative law judge concludes the claimant is not able to and available for work to the extent he was prior to his leave of absence from May to October. The employer is not obligated to accommodate work restriction imposed by a physician due to a non-work-related injury or illness, nor is the employer obligated to accommodate the claimant's self imposed limitations on his work duties. Benefits are withheld until such time as the claimant obtains a full medical release to return to work and no longer limits his hours of work or his duties.

DECISION:

The representative's decision dated November 9, 2009, reference 02, is reversed. The claimant is not able to work and available for work effective October 5, 2009. Benefits are withheld until such time as the claimant obtains a full medical release to return to work and makes himself available for the duties and hours he was working prior to his leave of absence.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/css