

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEFFREY W BROWN
Claimant

TPI IOWA LLC
Employer

APPEAL NO. 16A-UI-12109-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/23/16
Claimant: Appellant (1)

Iowa Code § 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated November 7, 2016 reference 02, which held claimant not able and available for work. After due notice, a hearing was scheduled for and held on November 29, 2016. Claimant participated personally. Employer participated by Danielle Williams.

ISSUE:

The issue in this matter is whether claimant is able and available for work.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant last worked for employer on June 12, 2016. Claimant had a personal back injury which didn't allow claimant to do his regular job. Claimant was placed on FMLA, and had back surgery on July 28, 2016. After the surgery, claimant was put on a ten pound weigh restriction with no repetitive twisting or turning. Claimant's job required that he do repetitive twisting and turning, and at times that he lift over ten pounds. Claimant was not allowed to return to work without a removal of this restriction.

Claimant did not get this weight restriction lifted by the end of his FMLA leave. Employer terminated claimant on October 20, 2016 as claimant was still not able to do the tasks required by his job. Claimant has still not been released by his doctor to return to work.

Claimant stated that he is able and available at this time to do work that is within his restriction, and is trying to get a doctor to completely remove his restrictions.

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. 871-24.23(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 treating physician has not released the claimant to return to work, the claimant has not established the ability to work. Benefits are withheld until such time as the claimant obtains a full medical release to return to work.

DECISION:

The decision of the representative dated November 7, 2016, reference 02 is affirmed. Claimant is not eligible to receive unemployment insurance benefits at this time.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs