

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CHARLES DREES
Claimant

APPEAL NO: 14A-UI-07465-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

**OC: 06/22/14
Claimant: Respondent (2)**

Section 96.4-3 – Able and Available
Section 96.3-7 – Recovery of Benefit Overpayment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the July 14, 2014, reference 01, decision that allowed benefits to the claimant. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on August 12, 2014. The claimant participated in the hearing. Colleen McGuinty, Unemployment Benefits Administrator and Sandy Ford, Branch Manager, participated in the hearing on behalf of the employer. Employer's Exhibit One was admitted into evidence.

ISSUE:

The issue is whether the claimant is able and available for work.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant sustained a work-related injury May 30, 2014, and notified the employer June 3, 2014. On June 4, 2014, the employer offered the claimant a light-duty position performing light cleaning and office work within his restrictions at its Independence, Iowa, location. The assignment included work hours of 8:00 a.m. to 4:30 p.m. and paid him \$12.00 per hour. The employer made the offer by certified mail, return receipt requested, and the claimant returned the offer form to the office, checking the box that stated, "I refuse the above job assignment." He told the employer he refused the offer because he did not have transportation to Independence. He testified his hand was in a sling and he was taking narcotic pain medication so he could not drive. His wife drove him to work between June 2 and 3, 2014. His doctor did not tell him he could not drive.

On July 7, 2014, the employer offered him another light-duty work assignment at a food pantry in Oelwein, Iowa, performing any work within his restrictions. The hours were 8:00 a.m. to 4:30 p.m. and the wages were \$12.00 per hour. The employer sent the claimant a certified letter July 7, 2014, and the claimant received the offer. The claimant called and stated his attorney was handling everything and ended the conversation. The claimant testified his hand

was out of the sling but he was still on narcotic pain medication. His doctor had not told him he could not drive.

The claimant was no longer on pain medication effective July 22, 2014. The claimant still has restrictions in place but is not in a sling. The claimant has not checked in with the employer since being taken off pain medication and getting his hand out of the sling.

The claimant testified another reason for his refusal of the job offers was the driving distance involved. The employer's office in Independence is located in a rural area and at the time of hire the employer asked the claimant how far he was willing to travel and the claimant indicated 30 to 45 miles. The employer testified the jobs offered to the claimant were approximately 30 miles away. The claimant stated the June job offer in Independence would have required him to drive 52 miles. The job offer in Oelwein would have required him to drive 20.6 miles.

The claimant has claimed and received unemployment insurance benefits in the amount of \$1,897.00 since his separation from this employer.

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

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 § 96.19, subsection 38, paragraph "b", unnumbered paragraph 1, or temporarily unemployed as defined in § 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 § 96.5, subsection 3 are waived if the individual is not disqualified for benefits under § 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.23(4) and (18) provide:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(4) If the means of transportation by an individual was lost from the individual's residence to the area of the individual's usual employment, the individual will be deemed not to have met the availability requirements of the law. However, an individual shall not be disqualified for restricting employability to the area of usual employment. (See subrule 24.24(7).

(18) Where the claimant's availability for work is unduly limited because such claimant is willing to work only in a specific area although suitable work is available in other areas where the claimant is expected to be available for work.

The claimant unduly limited his availability to work by restricting the distance he would travel to a job and stating he could not drive until he was off pain medication July 22, 2014. The claimant lives in a rural area and the employer asked him at the time of hire how far he was willing to travel at which time the claimant indicated between 30 and 45 miles. When the job was offered in June 2014 the claimant declined to even drive 29.6 miles. The parties disagree on the driving distance to the location of the second job offered but it was between 30 and 50 miles. Furthermore, the claimant's physician never stated he could not drive and the claimant did not return to the employer and offer to perform services after he was removed from pain medication and presumably could drive July 22, 2014. Accordingly, the claimant is not able and available for work effective June 22, 2014. Therefore, benefits are denied.

DECISION:

The July 14, 2014, reference 01, decision is reversed. The claimant is not able to work and available for work effective June 4, 2014. Benefits are denied. The claimant is overpaid benefits in the amount of \$1,897.00.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css