

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JIMMY R TEEPE
Claimant

APPEAL NO. 09A-UI-16939-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PENGO CORPORATION
Employer

OC: 03/01/09
Claimant: Appellant (1)

Section 96.4-3 – Able and Available for Work

STATEMENT OF THE CASE:

Jimmy Teepe filed a timely appeal from a representative's decision dated November 4, 2009, reference 02, which held that he was not able to perform work and, therefore, ineligible to receive unemployment insurance benefits as of September 11, 2009. After due notice, a telephone conference hearing was scheduled for and held on December 18, 2009. Mr. Teepe participated personally. The employer participated by Ms. Connie Grote, Human Resources Manager.

ISSUE:

The issue is whether the claimant is able and available for work within the meaning of the Iowa Employment Security Law.

FINDINGS OF FACT:

Having considered the evidence in the record, the administrative law judge finds: Jimmy Teepe was employed as a welder for Pengo Corporation until being laid off work on March 3, 2009. Mr. Teepe worked full-time and was paid \$12.78 per hour.

On September 4, 2009, the employer attempted to recall Mr. Teepe back to full-time employment as a production assembler at the same rate of pay and hours. Mr. Teepe declined the offer indicating that he was medically unable to work and desired to continue to seek a disability.

Mr. Teepe is unable to work due to the condition of his hip and can neither sit nor stand for full-time employment. The claimant's doctor has concluded that Mr. Teepe "cannot work."

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant is not able 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 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 24.22(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.

(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.

In this case Mr. Teepe testified under oath that he is unable to work due to a hip condition and has been deemed unable to work by his physician for medical reasons.

The law requires that an individual claiming unemployment insurance benefits must be physically and mentally able to work in gainful employment and based upon the claimant's testimony and the evidence in the record, the administrative law judge concludes that Mr. Teepe is not physically able to work and is, therefore, ineligible to receive to unemployment insurance benefits.

DECISION:

The representative's decision dated November 4, 2009, reference 02, is affirmed. The claimant is not able to perform work. Benefits are denied as of September 11, 2009.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs