

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW JACKSON
Claimant

APPEAL NO. 08A-UI-07846-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

APAC CUSTOMER SERVICES OF IOWA
Employer

OC: 05/18/08 R: 12
Claimant: Appellant (1)

Section 96.4-3 - Able and Available for Work

STATEMENT OF THE CASE:

Matthew Jackson (claimant) appealed an unemployment insurance decision dated August 19, 2008, reference 04, which held that he was eligible for unemployment insurance benefits as of August 17, 2008. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 16, 2008. The claimant participated in the hearing with April Vogt. The employer did not comply with the hearing notice instructions and did not call in to provide a telephone number at which a representative could be contacted and, therefore, did not participate. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant was disqualified from receiving unemployment insurance benefits as of June 15, 2008, because he was not able to work due to surgery. The disqualification decision dated June 27, 2008 advised him benefits are denied until he provides proof that he is able to work. The claimant provided proof on August 18, 2008 that he is medically able to work. Therefore, the disqualification was removed as of August 17, 2008.

REASONING AND CONCLUSIONS OF LAW:

The issue to be determined is whether the claimant is able and available for work. A statement from a medical practitioner is considered prima facie evidence of the physical ability of the individual to perform the work required. See 871 IAC 24.22(1)(a).

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 24.23(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.

The claimant has the burden of proof in establishing his ability and availability for work. Davoren v. Iowa Employment Security Commission, 277 N.W.2d 602 (Iowa 1979). On August 18, 2008, the claimant provided medical documentation showing he is able to work. Consequently, the claimant does meet the availability requirements of the law as of August 17, 2008, and benefits are allowed.

DECISION:

The unemployment insurance decision dated August 19, 2008, reference 04, is affirmed. The claimant qualifies for unemployment insurance benefits as of August 17, 2008, provided he is otherwise eligible.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/kjw