

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN A SMITH
Claimant

APPEAL NO: 07A-UI-04968-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUILDER SERVICES GROUP INC
Employer

OC: 04/01/07 R: 03
Claimant: Respondent (4)

Section 96.5-1-d – No Work after Fully Recovered from an Approved Medical Leave
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Builder Services Group, Inc. (employer) appealed a representative's May 2, 2007 decision (reference 02) that concluded John A. Smith (claimant) was qualified to receive unemployment insurance benefits as of April 1, 2007 because there was no work available for the claimant after he was released to return to work. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled on May 31, 2007. Neither party responded to the hearing notice or participated in the hearing. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the claimant eligible to receive benefits as of April 1, 2007, when he has been released to return to work with some work restrictions?

FINDINGS OF FACT:

The claimant started working for the employer on October 29, 2005. The claimant learned he had a damaged disk which required surgery. The claimant requested and the employer agreed he could have time off for this surgery. The claimant's surgery was scheduled on March 16, 2007. The claimant's doctor anticipated the claimant needed six to eight weeks to recover from the surgery.

On March 27, the claimant's doctor released him to return to work with a 46-pound weight restriction and indicated the claimant could work as he could tolerate. The employer was unable to meet the claimant's work restrictions and could not provide him with any work at the time.

The claimant established a claim for benefits during the week of April 1, 2007. The claimant filed claims for the weeks ending April 7 through May 26, 2007. The claimant received his maximum weekly benefit amount of \$219.00 for each of these weeks.

The claimant's doctor released him to return to work without any work restrictions on April 30, 2007. The claimant's doctor faxed the release to the employer. The claimant had not returned to work for the employer as of the week ending May 26, 2007.

REASONING AND CONCLUSIONS OF LAW:

A claimant who leaves employment upon the advice of a physician and obtains a medical leave of absence but offers to return to work after he has recovered and can perform his regular work is not disqualified from receiving benefits if the employer does not have work available when the claimant offers to return to work. Iowa Code section 96.5-1-d.

The facts establish the claimant was not able to perform his regular job duties as of April 1, 2007. His physician released him to return to work with some work restrictions that the employer was unable to accommodate. As of April 30, 2007, the claimant was released to work without any work restrictions and was able to perform his regular work. Therefore, the claimant is not eligible to receive benefits for the weeks ending April 7 through 28, 2007. As of April 29, the claimant is eligible to receive benefits because he is able to work, but the employer has not scheduled the claimant to return to work.

If an individual receives benefits he is not legally entitled to receive, the Department shall recover the benefits even if the individual acted in good faith and is not at fault in receiving the overpayment. Iowa Code section 96.3-7. The claimant is not legally entitled to receive benefits for the weeks ending April 7 through 28, 2007. He has been overpaid \$876.00 in benefits he received for these weeks.

DECISION:

The representative's May 2, 2007 decision (reference 02) is modified in the employer's favor. The claimant is not eligible to receive benefits for the weeks ending April 7 through 28 because even though he offered to return to work he had work restrictions that prevented him from performing his regular job. The claimant is, however, eligible to receive benefits as of April 29, because his physician released him to return to work without any restrictions and the employer did not schedule him to work. The claimant has been overpaid and must repay a total of \$876.00 in benefits he received for the weeks ending April 7 through 28, 2007. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs