

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH DEMAR**  
Claimant

**APPEAL NO. 10A-UI-07409-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GILCREST/JEWETT LUMBER COMPANY**  
Employer

**OC: 04/18/10**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work

**STATEMENT OF THE CASE:**

The claimant filed a timely appeal from the May 13, 2010, 2010 (reference 01) decision that denied benefits. After due notice was issued, a telephone conference hearing was held on July 8, 2010. Claimant participated with Karon Demar. Employer participated through Amy Laughlin, Jeri Stossel, Joby Campbell, and Nick Fischer.

**ISSUE:**

The issue is whether claimant is able to and available for work effective April 18, 2010.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed the evidence in the record, the administrative law judge finds: Claimant most recently worked full time as a truck driver and counter help and is still considered an employee. After he was no longer medically able to drive a truck, employer created an indoor job for him. His last day of work was April 19, 2010. He completed vacation and Fischer gave him a letter indicating he was no longer able to perform the essential functions of his job and was placed on medical leave after they presented a March 10, 2010 treating physician excuse from vacuuming the day after Fischer asked him to vacuum. Drs. Swensen and Matthews treat him for his muscular dystrophy diagnosed in 2002. As of July 8, 2010 he has been approved for long-term disability benefits through the employer's coverage.

**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 effective April 18, 2010.

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".

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 24.23(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 medical condition is not work related and the treating physician has limited him from vacuuming, a regular part of his job duties. Accordingly, the claimant has not established his ability to work. Employer is not obligated to accommodate a non-work-related medical condition, and since he has not been released to perform his full work duties, claimant is not considered able to or available for work.

**DECISION:**

The representative's decision dated May 13, 2010 (reference 01) is affirmed. The claimant is not able to work and available for work effective April 18, 2010. Benefits are withheld.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

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