

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DENNIS G KILLION
Claimant

APPEAL NO: 17A-UI-02627-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

FERRARA CANDY COMPANY
Employer

OC: 02/05/17
Claimant: Appellant (2)

Section 96.4-3 – Able and Available

STATEMENT OF THE CASE:

Dennis Killion (claimant) appealed a representative's March 3, 2017, decision (reference 02) that concluded he was not eligible to receive unemployment insurance benefits because he was unable to perform work due to injury. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 3, 2017. The claimant participated personally. Ferrara Candy Company (employer) did not provide a telephone number where it could be reached and therefore, did not participate in the hearing. Exhibit D-1 was received into evidence.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant worked for the employer from February 25, 2014, to December 1, 2016. He had knee replacement surgery on April 27, 2016, and did not work after his surgery. The claimant had medical restrictions after his surgery. On March 1, 2017, the claimant's physician indicated the claimant was restricted from working from April 25, 2016, to September 23, 2016. As of February 6, 2017, the claimant's last treatment date, the claimant had no restrictions on his ability to work.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the claimant is able and available for work.

Iowa Admin. Code r. 871-24.23(1) provides:

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

(1) An individual who is ill and presently not able to perform work due to illness.

When an employee is ill and unable to perform work due to that illness, he is considered to be unavailable for work. The claimant was released to return to work without restrictions by his physician. He is considered to be available for work because his physician stated he was able and available for work. Benefits are allowed, provided the claimant is otherwise eligible.

DECISION:

The representative's March 3, 2017, decision (reference 02) is reversed. Benefits are allowed, provided claimant is otherwise eligible.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs