

**STATE OF ILLINOIS
DEPARTMENT OF EMPLOYMENT SECURITY
APPEALS DIVISION
REFEREE'S DECISION**

APPEAL DOCKET AR-8019369A

LOCAL OFFICE: 062

CLAIMANT:

ELDON LOUD
3855 MYSTIC VALLEY
IMPERIAL MO 63052

EMPLOYER: (APPELLANT)

COLUMBIA QUARRY COMPANY
PO BOX 18
COLUMBA IL 62236-0018

SOCIAL SECURITY NUMBER: 488-66-9007
DATE OF APPEAL: 05/06/08
DATE OF RECONSIDERATION: 05/05/08

DATE OF HEARING: 05/23/08
PLACE OF HEARING: Telephone
DATE OF MAILING: 05/27/08

APPEARANCES/ISSUES/EMPLOYER STATUS: The claimant and the employer appeared and testified at the hearing. The employer was represented by legal counsel. The issue is: Was the claimant able to, available for, and actively seeking work during the relevant period as required by Section 500C of the Illinois Unemployment Insurance Act? The employer is a party to this appeal.

FINDINGS OF FACT: The claimant has worked as a truck driver for the company approximately three and one-half years. Prior to filing his unemployment claim in January 2008, he last worked on or about 12/27/07, at which time he was either laid off or took a disability leave of absence. It cannot be determined for certain why he stopped working at that time, however, it appears more likely that it was because he went on a medical leave of absence, inasmuch as he underwent surgery for kidney stones on January 3, 2008 and was hospitalized for one week. He filed for disability benefits, through his union's Health and Welfare Fund Plan and drew weekly benefits of approximately \$300.00, from January 10 through April 20, 2008. (Ex. 4) An individual's right to receive disability benefits under the Plan is contingent upon him being unable to work. (Ex. 3) On April 1, 2008, he provided the company with a note from his doctor (Certificate for Return to Work), dated March 25, 2008. It stated that he was released to return to work, effective January 8, 2008, except excluding the period from 02/28/08 through 03/04/08, when he had another surgical procedure. He returned to his job at Columbia Quarry on or about April 9, 2008.

The claimant did not keep a record of his work search. His job search consisted primarily of looking on Monster.com. and asking friends and acquaintances about possible employment prospects. He was unable to recall any specific job contacts he made.

CONCLUSION: Section 500C of "The Unemployment Insurance Act" provides, in part, that an unemployed individual shall be eligible to receive benefits with respect to any week only if the Director finds that he is able to work, and is available for work; provided that during the period in question he was actively seeking work and he has certified such on a form provided by the Department listing the places at which he has sought work.

It is questionable whether the claimant was physically able to work during the benefit period. Notwithstanding that his doctor's note(s) say he was able to work, except from February 28 through March 4, the fact that he was receiving disability payments from mid January through mid-April strongly suggests that he was not able to work. Either that is true or he was not truthful when he applied for the disability benefits. In any event, he cannot have his cake and eat it, too, as the saying goes. If he was disabled and unable to work, he would not be eligible for unemployment benefits. On the other hand, if he were physically able to work, then he would not be eligible for the disability benefits.

Irrespective of the issue of whether he was able to work, the claimant is ineligible for unemployment benefits under Section 500C because he failed to show that he was actively seeking work. The Rules require that a claimant shall provide the written records required by this Section to the Agency whenever requested, pursuant to Section 2720.115, or in the event of a Claims Adjudicator's interview, an appeal or a hearing in which work search is an issue. Under Section 2720.115, a claimant's failure to provide his work search record as requested may result in a determination or decision being issued that the claimant did not conduct an active work search. 56 Ill.Admin.Code §2720.115. Such was the case here. The claimant kept no records of his work search. Further, making a general search for possible jobs via the Internet, coupled with a few inquiries of friends and neighbors, do not constitute a genuine and realistic attempt to rejoin the work force. It appeared from the evidence that the claimant always planned to return to his job at the quarry, however, in the meantime he was content to milk the system by double-dipping, so to speak, i.e., drawing both unemployment benefits and disability payments at the same time. In conclusion, inasmuch as the claimant failed to meet all of the requirements of Section 500C, he is ineligible for benefits.

DECISION: The determination of the Local Office is SET ASIDE. Under Section 500C of the Illinois Unemployment Insurance Act, eligibility for benefits is denied, as to this issue only, from 02/03/08 through 02/16/08.

JMW

JAY M. WATTS, HEARING REFEREE (Administrative Law Judge) 557

RIGHT OF FURTHER APPEAL: This decision will become final, unless WRITTEN NOTICE of appeal from the decision is filed within thirty days from the date of mailing shown above. The notice of appeal must be filed at the local unemployment insurance office where the claim is filed, with the Board of Review, 33 South State, Chicago, Illinois 60603, or by FAX at 312-793-2373.

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