

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JORGE VILLAGRANA
Claimant

IOWA BRIDGE & CULVERT LC
Employer

APPEAL 17A-UI-00579-JP-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/11/16
Claimant: Appellant (1)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.23(10) – Availability Disqualifications – Leave of Absence

STATEMENT OF THE CASE:

The claimant filed an appeal from the January 4, 2017, (reference 01) unemployment insurance decision that denied benefits as of December 11, 2016. The parties were properly notified about the hearing. A telephone hearing was held on February 7, 2017. Claimant participated. CTS Language Link interpreter ID number 6866 interpreted on claimant's behalf. Employer participated through Payroll Clerk Mary Nebel and Safety Director John Anderson. Employer Exhibits 1 and 2 were admitted into the record with no objection.

ISSUES:

Is the claimant able to work and available for work effective December 11, 2016?

Is the claimant on an approved leave of absence?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was employed full-time as a laborer. Claimant was hired on March 9, 2010. Claimant is still employed with the employer, but he is not currently working.

As a part of claimant's job duties, he was required to be able to push/pull/maneuver between fifty and one hundred pounds frequently. Employer Exhibit 1. Claimant was aware of this requirement when he was hired.

Claimant last performed work for the employer on May 9, 2016. Claimant had a personal health condition that precluded him from performing his normal job duties after May 9, 2016. The personal health condition was not work related. The employer placed claimant on a leave of absence until he presented a doctor's note that allowed him to return to work with normal job duties. Claimant did not ask to be on a leave of absence; it is the employer's standard procedure. Claimant provided the employer with work restrictions dated November 14, 2016, that precluded him from lifting anything over thirty pounds. Employer Exhibit 2. The November 14, 2016 doctor's note was claimant's least restrictive work restrictions that he had

provided the employer. The employer is not able to accommodate claimant's work restrictions. Claimant has not presented the employer a doctor's note releasing him back to full duty (with no work restrictions).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that claimant is not able to work and available for work effective December 11, 2016.

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".

Iowa Admin. Code r. 871-24.22(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.

Iowa Admin. Code r. 871-24.23(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.

To be able to work, "[a]n 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." *Sierra v. Employment Appeal Board*, 508 N.W.2d 719, 721 (Iowa 1993); *Geiken v. Lutheran Home for the Aged*, 468 N.W.2d 223 (Iowa 1991); Iowa Admin. Code r. 871-24.22(1). "An evaluation of an individual's ability to work for the purposes of

determining that individual's eligibility for unemployment benefits must necessarily take into consideration the economic and legal forces at work in the general labor market in which the individual resides." *Sierra* at 723. The court in *Gilmore v. Empl. Appeal Bd.*, 695 N.W.2d 44 (Iowa Ct. App. 2004) noted that "[i]nsofar as the Employment Security Law is not designed to provide health and disability insurance, only those employees who experience illness-induced separations that can fairly be attributed to the employer are properly eligible for unemployment benefits." *White v. Emp't Appeal Bd.*, 487 N.W.2d 342, 345 (Iowa 1992) (citing *Butts v. Iowa Dep't of Job Serv.*, 328 N.W.2d 515, 517 (Iowa 1983)).

Inasmuch as the medical condition is not work-related and the treating physician has not released claimant to return to work without restriction, he has not established his ability to work while still an employee of the employer. While claimant may be able to perform light work duties, the 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, he is not considered able to or available for work. Benefits are denied effective December 11, 2016.

DECISION:

The January 4, 2017, (reference 01) unemployment insurance decision is affirmed. Claimant is not able to work and available for work effective December 11, 2016. Benefits are withheld until such time as claimant obtains a full medical release to return to work, offers his services to the employer, and no suitable, comparable work is available considering reasonable accommodation; or if he is involuntarily separated before that time.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs