

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MARVIN M CLARK
Claimant

ALPHA SERVICES INC
Employer

APPEAL 22A-UI-13395-DH-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/17/22
Claimant: Appellant (3R)**

Iowa Code § 96.4(3) - Eligibility - A&A - Able to, available for, work search
Iowa Admin. Code r. 871-24.22(2) - Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Marvin Clark, claimant/appellant, appealed the May 27, 2022 (reference 02) unemployment insurance decision that denied benefits as of 04/17/22 as claimant not available for work since he is not willing to work in his usual occupation and has not established what other types of work he can do and is willing to do which unduly limits your availability for work. The parties were properly notified of the hearing scheduled for July 19, 2022, at 10:00AM. Employer, Alpha Service, Inc., participated through Steve Theisen, appliance manager. Claimant personally participated. Judicial notice was taken of the administrative record.

ISSUE:

Was the claimant able to and available for work?

FINDINGS OF FACT:

Having heard the testimony and reviewed the evidence in the record, the administrative law judge finds:

Claimant was a full-time third shift lead with a set schedule for employer. Claimant injured his knee on September 7, 2021, at work, filed a workers compensation claim which was granted and was under the care of a doctor and unable to work. Claimant had surgery on his knee and continued to be unable to work. Claimant was released to come back to work with no restrictions as of January 23, 2022. Claimant was unable to work due to pain. The doctor released claimant to work with restrictions effective February 17, 2022. Claimant was restricted from kneeling and from squatting. Employer's work offering is of general laborer and there were no positions that did not involve kneeling and/or squatting. Claimant was never able to/available to work after September 7, 2021. Claimant never provided a release to work without restrictions after January 23, 2022. Claimant became separated from employer around April 17, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was not able to work and available for work effective September 8, 2021.

Iowa Code section 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) 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.

b. Interpretation of ability to work. The law provides that an individual must be able to work to be eligible for benefits. This means that the individual must be physically able to work, not necessarily in the individual's customary occupation, but able to work in some reasonably suitable, comparable, gainful, full-time endeavor, other than self-employment, which is generally available in the labor market in which the individual resides.

Iowa Admin. Code r. 871-24.23(6) and (35) provides:

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

(6) If an individual has a medical report of file submitted by a physician, stating such individual is not presently able to work.

(35) Where the claimant is not able to work and is under the care of a medical practitioner and has not been released as being able to work.

In order to be eligible for benefits, an individual claiming benefits must be able to work, available for work, and actively and earnestly seeking work. In this case, on September 7, 2021, claimant injured his knee at work. A doctor reported claimant was not able to perform work due to the injury. Claimant had knee surgery to repair a torn meniscus in his knee. Claimant was released to go to work effective January 23, 2022 but was not able to perform work due to pain and went back to his doctor. Claimant did not receive a general release to work but had restrictions placed on his ability to work (no kneeling and no squatting) effective February 17, 2021. Other than the unsuccessful attempt at work on or near January 23, 2022, claimant last worked on September 7, 2021, until his injury and did not work again. Claimant did not return to employer, nor provide employer with a full release for work. Claimant became separated from employer around April 17, 2022.

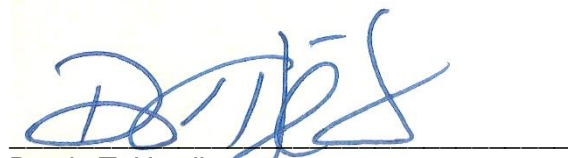
Claimant failed to meet his burden of proof that he was/is able to nor available to work as of September 8, 2021.

DECISION:

The May 27, 2022 (reference 02) unemployment insurance decision that denied benefits as of 04/17/22 as claimant not available for work is **MODIFIED** in favor of respondent, finding. Claimant was not able to work nor available for work effective September 8, 2021.

REMAND

This matter is remanded to the Benefits Bureau for them to determine whether an interview/investigation and a decision with appeal rights on the issue of claimant's separation from employment around April 17, 2022 is warranted, and any other issue as determined by the Benefits Bureau in light of the information set forth in this decision.



Darrin T. Hamilton
Administrative Law Judge

September 9, 2022
Decision Dated and Mailed

dh/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.