

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ARNOLD J CRISS**  
Claimant

**WILSON TRAILER CO**  
Employer

**APPEAL 18A-UI-03742-DL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/25/18**  
**Claimant: Appellant (1)**

Iowa Code § 96.4(3) – Ability to and Availability for Work  
Iowa Admin. Code r. 871-24.22(1) - Able to Work - illness, injury or pregnancy  
Iowa Admin. Code r. 871-24.23(35) - Availability Disqualifications

**STATEMENT OF THE CASE:**

The claimant filed an appeal from the March 16, 2018, (reference 01) unemployment insurance decision that denied benefits based upon not being able to or available for work. The parties were properly notified about the hearing. A telephone hearing was held on April 25, 2018. Claimant participated and was represented by Dennis McElwain, Attorney at Law. Employer participated through human resource manager Carol LaBrune, and was represented by Paul Deck, Attorney at Law. Claimant's Exhibit 1 was received. Employer's Exhibits A and B were received.

**ISSUE:**

Is the claimant able to work and available for work effective February 25, 2018?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant has been an employee for 38 years and works as a full-time quality control auditor. He was on a leave of absence related to surgery and recovery for a personal medical condition beginning November 13, 2017. On February 20, 2018, claimant's treating physician, Dr. Wilson Asfora of Sioux Falls, South Dakota, released him to work without restrictions effective March 6, 2018. (Claimant's Exhibit 1) He presented the release to LaBrune on February 28, 2018, and she saw him using a cane, which was not prescribed. He acknowledged being in pain despite having completed physical therapy. She was concerned about reinjury if he returned to his regular work duties so made arrangements for a fitness for duty exam with the company doctor, Douglas Martin, M.D. The first available appointment was April 3, 2018. Claimant was still using a cane at that appointment and reported pain. Dr. Martin referred him for objective testing on April 4, 2018. Physical therapist Brian Owens found that claimant would require lifting restrictions of no more than 30 pounds, taking a 15 second break when walking more than 750 feet, and limited standing. (Employer's Exhibit A) During the week of March 18 through 24, 2018, claimant was short of funds so used three days of vacation time. (Employer's Exhibit B) The employer accommodated Dr. Martin's restrictions and claimant returned to work on April 9, 2018.

## 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 February 25, 2018.

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(2) provides:

**Benefit 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.

**(2) Available for work.** The availability requirement is satisfied when an individual is willing, able, and ready to accept suitable work which the individual does not have good cause to refuse, that is, the individual is genuinely attached to the labor market. Since, under unemployment insurance laws, it is the availability of an individual that is required to be tested, the labor market must be described in terms of the individual. A labor market for an individual means a market for the type of service which the individual offers in the geographical area in which the individual offers the service. Market in that sense does not mean that job vacancies must exist; the purpose of unemployment insurance is to compensate for lack of job vacancies. It means only that the type of services which an individual is offering is generally performed in the geographical area in which the individual is offering the services.

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 medical practitioner and has not been released as being able to work.

Iowa Code section 216.6 (previously 601A.6) requires employers to make "reasonable accommodations" for employees with disabilities. Reasonable accommodation is required only to the extent that refusal to provide some accommodation would be discrimination itself. Reasonableness is a flexible standard measured in terms of an employee's needs and desires and by economic and other realities faced by the employer. *Sierra v. Emp't Appeal Bd.*, 508 N.W.2d 719 (Iowa 1993). See also, *Foods, Inc. v. Iowa Civil Rights Comm'n*, 318 N.W.2d 162 (Iowa 1982) and *Cerro Gordo Care Facility v. Iowa Civil Rights Comm'n*, 401 N.W.2d 192 (Iowa 1987).

Generally, a physician's release is prima facie evidence of a claimant's ability to work. However, the employer was reasonably concerned when claimant reported pain and used a cane to assist with mobility. Those factors would also lead to concerns about his ability to perform his regular work duties, thus the referral to a fitness for duty examination was practical. Even though the first available appointment was a month later, claimant was still reporting pain and using a cane. Thus, given those factors and the specific exam results requiring accommodation, claimant has not established his ability to return to his regular employment from February 28, 2018 through the week-ending April 7, 2018. The issue is moot after that date as the employer allowed claimant to work with the restrictions determined in the fitness for duty examination.

**DECISION:**

The March 16, 2018, (reference 01) unemployment insurance decision is affirmed. The claimant was not able to work and available for work from February 28, 2018 through the week-ending April 7, 2018. Benefits are withheld for that period of time.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/rvs