

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DAVID J CROW

Claimant

APPEAL 18A-UI-04055-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ARCTIC GLACIER USA INC

Employer

OC: 02/11/18

Claimant: Appellant (4)

Iowa Code § 96.4(3) – Ability to and Availability for Work

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated March 21, 2018, (reference 01) that held claimant not able to and available for work. After due notice, a hearing was scheduled for and held on April 25, 2018. Claimant participated personally. Employer failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether 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: Claimant was notified by his attorney that he would be serving jail time in January, 2018. Claimant notified his employer, and he was discharged by his employer prior to the date that he was incarcerated on February 23, 2018. Claimant was later incarcerated on March 23, 2018. He was sentenced to serve six months in jail on that date. Claimant is not able to and available for work beginning on March 23, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the claimant was able to work and available for work effective February 11, 2018 through the week ending March 17, 2018. Claimant was sentenced to jail on or about March 23, 2018 and is not able to and available to work after the week ending March 17, 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(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.

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. Emp't Appeal Bd.*, 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. This means that when evaluating whether a person with a protected disability is able and available to work we must take into account the reasonable accommodation requirements imposed on employers under federal, state, and local laws. *Id.*

Claimant was able to and available for work through the week ending March 17, 2018. He was later incarcerated in jail on March 23, 2018 and is currently serving a six month sentence. Benefits shall be allowed effective February 11, 2018 through March 17, 2018. Claimant is not able and available for work beginning on March 18, 2018 until such time as claimant is released from custody and is seeking work.

DECISION:

The decision of the representative dated March 21, 2018, (reference 01) is modified in favor of the appellant. Claimant is eligible to receive unemployment insurance benefits, effective February 11, 2018 through March 17, 2018, provided claimant meets all other eligibility requirements. He is not eligible to receive benefits for the week beginning March 18, 2018 until such time as he has been released from jail, and he has established that he is seeking work.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn