

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**GORDON C COLLINS**  
Claimant

**APPEAL NO. 17A-UI-06766-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOODWILL INDUSTRIES  
OF THE HEARTLAND**  
Employer

**OC: 05/28/17  
Claimant: Appellant (2)**

Iowa Code Section 96.4(3) – Able & Available

**STATEMENT OF THE CASE:**

Gordon Rollins filed a timely appeal from the June 27, 2017, reference 02, decision that denied benefits effective May 28, 2017, based on he claims deputy's conclusion that Mr. Rollins was unduly restricting his availability for work. After due notice was issued, a hearing was held on July 20, 2017. Mr. Rollins registered a telephone number for the hearing and participated in the hearing. The employer did not register a telephone number for the hearing and did not participate in the hearing. Exhibits A through E were received into evidence. The administrative law judge took official notice of the agency's administrative record of the claimant's weekly claims (KCCO) and of the administrative law judge decision in Appeal Number 17A-UI-06222-JE-T.

**ISSUES:**

Whether the claimant has been able to work and available for work since establishing his claim for benefits.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Gordon Rollins will turn 60 years old on July 21, 2017. Mr. Rollins has a commercial driver's license. Mr. Rollins served in the armed services for 12 years. While Mr. Rollins was in the military, he obtained a general education diploma (G.E.D.). Mr. Rollins suffers from chronic osteoarthritis that affects both of his wrists. Mr. Rollins also suffers from chronic tendinopathy in his left shoulder. Mr. Rollins is right-handed.

Mr. Rollins was most recently employed by Goodwill Industries of the Heartland as a full-time production clerk. Mr. Rollins began the employment in 2006 and last performed work for the employer at the end of May 2017. Mr. Rollins performed a variety of duties as a production clerk at Goodwill. These duties included cashiering, tagging and hanging soft goods, and processing incoming donations. The cashier duties also involved cleaning and merchandise "facing" duties. While employed by Goodwill, Mr. Rollins was able to perform the cashiering duties and soft-goods duties without difficulty, but was unable at times to perform heavy lifting in connection with processing incoming donations.

On June 1, 2017, Gordon Rollins applied for unemployment insurance benefits and established a claim for unemployment insurance benefits that was deemed effective May 28, 2017. Mr. Rollins has provided a medical Progress Note from Dr. Emmanuel Nwumeh, M.D., that indicates Mr. Rollins is able to work, but restricted from lifting greater than 40 pounds.

Mr. Rollins has thus far filed weekly claims for week ending June 3, 2017 through the week ending July 15, 2017. For each week of the claim, Mr. Rollins had applied for two or more jobs as part of his search for new employment. In addition, Mr. Rollins has participated in two job interviews. On July 13, 2017, Mr. Rollins interviewed for a cashier position at Murphy USA. At the time of the interview, that employer encouraged Mr. Rollins to apply for an Assistant Manager position. Mr. Rollins applied for that position, was offered the position, and accepted the new full-time employment. Mr. Rollins' start date is Monday, July 24, 2017.

### **REASONING AND CONCLUSIONS OF LAW:**

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.

Iowa Admin. Code r. 871-24.22(2) 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.

(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.

According to Mr. Rollins' physician, Mr. Rollins is able to work, but restricted to lifting no more than 40 pounds. Since Mr. Rollins established his claim for unemployment insurance benefits he has each week engaged in an active and earnest search for new employment by applying for jobs within his physical abilities. Mr. Rollins has demonstrated both ability to work and availability for work since he established his unemployment insurance claim. Mr. Rollins is eligible for benefits for the benefit week that ended June 3, 2017 through the benefit week that ended July 15, 2017, provided he meets all other eligibility requirements. Even though Mr. Rollins has accepted new employment that is to begin July 24, 2017, Mr. Rollins must make the required job contacts, make a weekly claim, and meet all other eligibility requirements in order to be eligible for benefits for the week that will end July 22, 2017.

**DECISION:**

The June 27, 2017, reference 02, is reversed. The claimant has been able to work, available for work, and engaged in an active and earnest search for new employment since establishing his claim for benefits. Accordingly, the claimant is eligible for benefits for the benefit week that ended June 3, 2017 through the benefit week that ended July 15, 2017, provided he meets all other eligibility requirements. Even though the claimant has accepted new employment that is to begin July 24, 2017, the claimant must make the required job contacts, make a weekly claim, and meet all other eligibility requirements in order to be eligible for benefits for the week that will end July 22, 2017.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs