

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TENOFUS LEWI
Claimant

DEN HARTOG INDUSTRIES INC
Employer

APPEAL 17A-UI-12131-SC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 09/17/17
Claimant: Appellant (3)

Iowa Code § 96.4(3) – Ability to and Availability for Work
Iowa Admin. Code r. 871-24.22(2) – Able & Available - Benefits Eligibility Conditions

STATEMENT OF THE CASE:

Tenofus Lewi (claimant/appellant) filed an appeal from the November 17, 2017, reference 01, unemployment insurance decision that denied benefits based upon the determination he was not able to work effective October 22, 2017 as he was under the care of a physician. The parties were properly notified about the hearing. A telephone hearing began on December 14, 2017 and concluded on December 20, 2017. The claimant participated. Den Hartog Industries, Inc. (employer/respondent) participated through Director of Human Resources Chris Carda. Chuukese interpretation was provided by Nas (employee number 11517) from CTS Language Link. The Claimant's Exhibit A was received. Official notice was taken of the administrative record, specifically the claimant's database readout (DBRO).

ISSUE:

Is the claimant able to work, available for work, and actively and earnestly seeking work?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed full-time as a Blowmold Operator beginning on February 27, 2015, and his last day physically worked was March 30, 2017. Shortly thereafter, the claimant sustained a non-work related injury that rendered him unable to work. The employer placed the claimant on Short-Term Disability (STD) which paid him for up to six months.

After exhausting his STD payments, the claimant applied for unemployment insurance benefits effective September 17, 2017. The claimant was unable to work due to his injury until September 19, 2017. At that point, he notified the employer he could return to work but was restricted from lifting more than 15 pounds. The employer did not have a position for the claimant at that time and he remained on leave. On November 10, 2017, the claimant's doctor changed his restrictions to no lifting using his right extremity. The claimant notified the employer of the change. The employer declined to give him a position within his restrictions and he remained on leave. On December 18, 2017, the claimant's doctor released him to return to

work on January 2, 2018 with no restrictions. The claimant will be starting back to work on that day. During the time he was on leave, the claimant has not sought work with other employers.

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 September 17, 2017 through the week ending December 30, 2017. Benefits are denied.

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 provides, in relevant part:

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

(10) The claimant requested and was granted a leave of absence, such period is deemed to be a period of voluntary unemployment and shall be considered ineligible for benefits for such period.

...

(20) Where availability for work is unduly limited because the claimant is waiting to be recalled to work by a former employer or waiting to go to work for a specific employer and will not consider suitable work with other employers.

...

(27) Failure to report on a claim that a claimant made any effort to find employment will make a claimant ineligible for benefits during the period. Mere registration at the workforce development center does not establish that a claimant is able and available for suitable work. It is essential that such claimant must actively and earnestly seek 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.

As the medical condition was not work-related and the treating physician had not released the claimant to return to work without restriction, the claimant has not established his ability to work while still an employee of the employer effective September 17, 2017 through the week ending December 30, 2017. While he may be able to perform light work duties, the employer is not obligated to accommodate a non-work related medical condition, and since he was not released to perform his full work duties, he is not considered able to or available for work. Additionally, the claimant acknowledged that he was not seeking employment with any other employer while he was on leave and claiming unemployment insurance benefits. Benefits are denied.

DECISION:

The unemployment insurance decision dated November 17, 2017, reference 01, is modified in favor of the respondent. The claimant is not able to work and available for work effective September 17, 2017 through the week ending December 30, 2017. Benefits are denied.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn